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A hand book on Florida land titles; a treatise for title examiners and abstracters [sic]. A reference for the use of property owners; an elementary text for students of the law of real property. A library of elementary principles respecting the division and alienation of lands and the laws relating to ownership.

H. R. Partlow

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Florida Land Titles

By

H. R. PARTLOW

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A Hand Book

on

Florida Land Titles

A TREATISE FOR TITLE EXAMINERS AND ABSTRACTERS.

A REFERENCE FOR THE USE OF PROPERTY OWNERS

AN ELEMENTARY TEXT FOR STUDENTS OF THE LAW OF REAL PROPERTY.

A LIBRARY OF ELEMENTARY PRINCIPLES RESPECTING THE DIVISION

AND ALIENATION OF LANDS AND THE LAWS RELATING TO OWNERSHIP.

By

H. R. PARTLOW, A.B., LL.B.

Member of the Tennessee Bar; Member of the Arkansas Bar; Licensed Title Examiner under United States Government; Practitioner before all the Bureaus of the Department of the Interior.

"There is a distinct joy in owning a piece of land unlike that which you have in money, in houses, in books, in pictures, or in anything which men have devised.

"Personal property brings you into society with men. But land is God's estate in the world; and when a parcel of ground is deeded to you, and you walk over it, and call it your own, it seems that you had come into partnership with the original proprietor of the earth."—Beecher.

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Foreword

The necessity for a work of the kind this purports to be is the apology offered by the Author for its publication.

Within recent years the value of real estate in Florida has increased to such an extent that some uniform and directory method of abstracting titles and the examination of the same is urgent. This urge made upon abstracters and title attorneys in order to consummate real estate deals has brought about a feeling of disquietude and a lack of confidence in real estate titles in Florida. This feeling is not well founded and to combat this is one of the reasons assigned for the publication of this book at this particular time. Also, the great demand for abstracts has brought into the field abstracters from every state in the Union, and the lack of experience in dealing with local conditions and laws has been disastrous to the bringing about of a spirit of confidence.

The conditions of Florida are unlike those incident to other Southern states insofar as they relate to the inceptive methods of deriving titles and in the matters of surveys. On account of the extent of Gulf and Ocean lines and lake and river frontage peculiar questions of both surveying and the interpretation of descriptions incident thereto arise. These needs therefore have required of the Author a rather full discussion of the matter of the inception of title from the United States Government, and also a detailed discussion of matters relating to surveys of these water fronts.

The work is intended to be a plain discussion of a technical matter and to present and suggest a uniform system both in the contents of the abstract and the examination of the title.

THE AUTHOR.

Dedication

To the Abstracters of Land Titles who perform, for a compensation incommensurate with the technical knowledge required, herculean service in tracing out titles through records, many of which have been improperly drafted and defectively recorded, and to the Members of the Florida Bar upon whom has devolved the labor and from whom the intricate legal knowledge of passing upon the muniments of title submitted is required, this volume is most respectfully dedicated by a member of the legal profession who has chosen the State as his adopted home.

A Hand Book

on

Florida Land Titles

By H. R. PARTLOW

CHAPTER ONE

TITLE ACQUIRED BY UNITED STATES FROM SPAIN

The United States acquired title to the land of Florida by virtue of the Treaty with Spain, under date of February 22, 1819. Article two of the Treaty reads:

> "His Catholic Majesty cedes to the United States, in full power and sovereignty, all the territories which belong to him, situated to the eastward of the Mississippi, known by the name of East and West Florida. The adjacent islands dependent upon said provinces, all public lots and squares, vacant lands * * * archives and documents which relate directly to the property and sovereignty of said provinces are included in this article." * * * *

Article eight of the Treaty has reference to the grants of lands before January 18, 1818, and confirms the title in the respective grantees as follows:

> "All the grants of land made before the 24th day of January, 1818, by his Catholic Majesty, or by his lawful authorities, in said territory ceded by his Majesty to the United States shall be ratified and confirmed to the persons in possession of the land, to the same extent that the same grant would be valid as if the territories had remained under the dominion of his Catholic Majesty. But the owners in possession of such lands, who, by reason of the recent circumstances of the Spanish Nation, and the revolutions in Europe, have been prevented from fulfilling all the conditions of their grants, shall complete them within the terms limited in the same, respectively, from the date of this treaty; in default of which, the said grants shall be null and void. All grants made since the 24th of January, 1818, when the first proposal, on the part of his Catholic Majesty, for the cession of the Floridas, was made, are hereby declared, and agreed to be, null and void."

Grants were made by both England and Spain during their respective ownerships of the lands of Florida. The grants have been respected by the decisions of the highest Courts, not only of the State, but of the United States.

The State of Florida was admitted into the Union March 3, 1845, upon the express condition that she shall never interfere with the primary disposal of the public domain of the Government.

Some grants were made by the Indians, but none of these have been respected by the Signatory Powers. For discussion of the status of Indian Titles read the case of "Apalachicola L. & D. Co., et al, Vs. McRae, et al," Vol. 86 Florida Reports, page 395.

COLLATERAL REFERENCES

For convenience the following are given as source references so that the reader may, if he desires, follow these.

COLLATERAL SOURCES OF INFORMATION

For convenience the following source references are given in order that the reader may pursue the subject matter further, if he desires. (1) By the Treaty of Paris Feb. 10, 1663, Florida was acquired by England (Murphy's Florida's Real Estate Law and Forms, page 19); (2) The Treaty of Versailles, Jan. 28, 1783, returned Florida to Spain (Supra); (3) By Act of Congress March 30, 1822, and March 3, 1823, the Territory of Florida acquired by United States was created a Territory of the United States (R. G. S., Vol. 1, pages 247 to 260 inclusive); (4) January 11, 1839, the people of the Territory of Florida formed a republican form of Government, adopted a constitution and asked admission into the Union (R. G. S., Vol. 1, page 263, McClelland's Digest, pages 953 and 954; (5) Next Constitution adopted Feb. 25, 1868 (McClelland's Digest, page 21 et seq; (6) Next Constitution adopted at convention of 1885, became effective January 1, 1887. (Revised Statutes of 1892; (7) July 25, 1845, the Florida Legislature accepts admission into Union on terms prescribed. (McClelland's Digest, page 954.)

CHAPTER TWO

HISTORY OF LAND DEPARTMENT OR DEPARTMENT OF THE INTERIOR

From what previously has been said and for the reason of what follows it is necessary to give some discussion of the Department handling land matters, together with its Jurisdiction.

THE DEPARTMENT OF THE INTERIOR, together with the Bureaus thereof, and the various offices of these Bureaus, frequently will be referred to in the succeeding pages, and for that reason a brief history will be given of them.

The Department of the Interior was created by an Act of Congress, approved March 3, 1849. It is composed of Bureaus which had formerly belonged to other departments of government. For instance, the Patent Office Bureau had belonged to the State Department; the Land Office to the Treasury Department; the Pension Office to the War Department; the Office of Indian Affairs to the War Department. The Department of Education is one of the Bureaus of the Interior Department. The heads of the various Bureaus are called **Commissioners.** The function of the Department of the Interior is entirely domestic,—all foreign matters being left to the Department of State. The head of the Department of the Interior is called the **Secretary of Interior,** and as such officer he exercises jurisdiction over the various Bureaus, in case of appeals. Deeds or patents made prior to March 3, 1849, by the Federal Government were executed under the supervision of the Treasury Department.

THE GENERAL LAND OFFICE IS A BUREAU OF THE DEPARTMENT OF INTERIOR

The General Land Office is composed of fourteen divisions, represented by a letter of the alphabet and any instrument of writing from that Bureau will bear some letter indicative of one or more of these divisions. These are given for information in order that the abstracter and examiner may avail himself of the opportunity of intelligently using them in correspondence with the Department or any of its Bureaus. They are as follows: A (Chief Clerk), B (Patents), C (Public Lands, Homesteads, Timber and Stone, Isolated Tracts), D (Files), E (Surveys), F (Railroad Lands and Right of Ways, G (Desert, School, Swamp, Indian Pre-emptions), H (Contests), K (Reclamation, Townsite Script), L (Plats), M (Accounts and Payments), N (Mineral Lands), O (Tract Books), and F. S., formerly "P", (Field Service). One of these letters will appear on every letter of the Department or decision and will indicate the division or Bureau from which it came.

ROUTINE OF THE DECISION OF THE DIVISIONS

A decision upon being prepared in any of the Divisions heretofore mentioned, approved and initiated by the Chief of the Division, is sent to the principal law clerks which are designated and known as the BOARD OF LAW REVIEWS, where it is again considered, and if satisfactory, is forwarded to the COMMISSIONER OR ASSISTANT COMMISSIONER for consideration and signature, if approved. The BOARD OF LAW REVIEWS is composed of four attorneys who have had special preparation in the work undertaken. The COMMISSIONER considers all cases arising from certain divisions and the ASSISTANT COMMISSIONER considers the cases arising from the remaining divisions. If matters of special importance arise in the division under the Assistant Commissioner, the Commissioner takes cognizance of such cases himself. Occasionally cases are presented by oral argument before the Commissioner and one or more of the prin-

cipal law clerks or one or more of the examiners having jurisdiction over the case under consideration, but as a general rule cases are considered and decided wholly from briefs.

APPEALS TO SECRETARY OF THE INTERIOR

In the office of the Secretary of the Interior, land and mineral cases appealed from the General Land Office are considered by a force of twenty-five Assistant Attorneys, who serve under an Assistant Attorney General of the United States, though by an Act of 1914 that officer is now known as the Solicitor of the Interior Department. One of these lawyers is appointed by the First Assistant Attorney, and acts as the general manager of the others, or under his superintendence.

A decision of this office takes much the same course as in the General Land Office, being first written by the Assistant Attorney, then subjected to the consideration of the Solicitor, and if approved by him, it goes before the Secretary of the Interior or one of his assistants for approval and signature.

Most of the contest cases are considered by the First Assistant Secretary, if absent by an Assistant Secretary, or the Secretary himself. However, only in rare instances is the Secretary thus engaged, for this is a matter of administration. The Assistant Secretary has in his department of work, National Parks, Pensions and Miscellaneous matters.

BOARD OF LAW REVIEWS

Under a late Act of Congress a Board of Law Reviews in the Secretary's office has been appointed and consists of a Chief, and two Assistant Attorneys. All are trained for the work in hand. The work of this Board of Law Reviews is to supervise decisions prepared by the Assistant Attorneys, and occasionally conduct oral argument, thus relieving the First Assistant Secretary and the Assistant Secretary of some of the burdens cast upon them. The Board of Law Reviews assures mature consideration of opinions. Possibly the establishing of this Board of Law Reviews is a response to the popular demand for the allowance of the right of appeal from the Department of Interior to the Court exercising jurisdiction in such matters.

PERSONNEL OF THE DEPARTMENTS

The personnel of the department is made up of men well trained in the interpretation of the laws relating to the matters under jurisdiction of the various Departments, and have had vast experience in the practice which insures careful and painstaking attention. Each case is carefully considered by men competent for that purpose, thereby fulfilling the function of this important branch of the Government.

CHAPTER THREE

HOW TITLE IS ACQUIRED FROM THE UNITED STATES GOVERNMENT

Title emanates from the United States Government in three ways: (1) Conveyance of title by patent executed under existing laws and the procedure of the Land Department; (2) By Acts of Congress in the nature of an **act in praesenti**; and (3) By confirmatory acts which operate in the nature of an estoppel. These differ in procedure, but for all intents and purposes may be classified under the three general heads.

THE JURISDICTION OF THE LAND DEPARTMENT

The Land Department has original and exclusive jurisdiction of conveyance by patent, but the record of a perfect patent, duly enrolled as required by the Department, divests the Land Department of any further jurisdiction of the lands covered thereby.

> "Title of the United States passes with Patent, and with the title passes all authority or control of the Land Department over the lands and over the title which the patent conveys." (10 L. D. 394). A court of equity has no jurisdiction until the Land Department has determined the matter (Smith vs. Love, 49 Fla. 230).
>
> "The decisions of the courts and of the Department are to the effect that when patent issues, the land passes beyond the jurisdiction of the Land Department, but they do not question the latter's right to determine what lands have been patented." (35 L. D. 91.)

However, if a patent has been issued which misdescribes the lands, the Department will reissue patent upon surrender of the former patent. It is a general principle that a patent will be issued to correct a mistake on surrender of the former patent where it fails to describe the lands. (11 L. D. 123). But if a patent has been issued in conformity with the entire record, the Department has no authority to accept a surrender of a patent for amendment. (14 L. D. 534). It seems that the Department may recall a patent with the consent of the grantee or patentee, when not issued in conformity with the record, and issue another patent.

The general rule is that the Land Department has no power either to withhold from the patentee or to cancel a patent which has been signed, sealed and recorded. (31 L. D. 199). If a patent has been issued upon fraudulent representations, the power of cancellation rests upon the Department of Justice and not upon the Land Department by proper procedure hereinafter discussed.

THE GENERAL LAND OFFICE ESTABLISHED AS A DEPARTMENT OF THE TREASURY

By an Act of Congress, approved April 25, 1812, there was established in the Department of the Treasury, an office denominated as the General Land Office, the chief officer of which shall be called the Commissioner of the General Land Office. In the Act, his duties are briefly defined as having superintendence of executing and performing all acts and things touching and respecting the public lands of the United States as have heretofore been directed and performed in the office of the Secretary of State, of the Secretary and Register of the Treasury, and Secretary of War, or which may hereafter be assigned to said office. (Section 1, of Act of Congress approved April 25, 1812.)

Section 8 of the same Act provides that all patents issuing from said office shall be issued in **the name of the United States**, and under **the seal of said office**, and be signed by **the President of the United States**, and

countersigned by **the Commissioner of said office,** and shall be recorded in said office, in books to be kept for that purpose.

It will be observed that Section 8 required the personal **signature of the President** of the United States. Furthermore, the countersigning was to be done by the **Commissioner.**

By an Act of Congress approved March 2, 1833, the authority was given to the President to appoint, by and with the advice and consent of the Senate, a Secretary, whose duty it was, under the direction of the President, to sign his name, and for him all patents for lands sold or granted under the authority of the United States. (Lester's Public Land Laws, Volume 1, page 44).

It will be observed that in Section 8 of the Act of Congress, approved April 25, 1812, that the Act provides the issuance of Patent in the **"name of the United States,"** and not in the name of the President. Many patents were issued in the name of the President of the United States, whereas, it should have been in the "name of the United States." This became a matter of judicial concern, and an Act of Congress approved March 3, 1841, sought to confirm title in the various patentees, their heirs, executors, administrators and assigns.

However, it became necessary for a reorganization of the General Land Office, and there was accordingly passed an Act of Congress approved July 4, 1836, for that purpose:

Section 1 fixes or prescribes the duties of the office in manner following, to-wit:

> "That from and after the passage of this act, the executive duties now prescribed by law, appertaining to the surveying and sale of the public lands of the United States, or in anywise respecting such public lands, and, also such as relate to private claims of lands and the issuing of patents for all grants of lands under the authority of the Government of the United States, shall be subject to the supervision and control of the Commissioner of the General Land Office, under the direction of the President of the United States." Lester's Land Laws, Vol. 1, pg. 36).
>
> "There shall be appointed by the President, by and with the consent of the Senate, a Recorder of the General Land Office, whose duty it shall be, in pursuance of instruction from the Commissioner, **to certify and affix the seal of the General Land Office to all Patents for public lands, and he shall attend to the correct engrossing and recording and transmission of such patents."** * * * (Section 4 of the Act of Congress approved July 4, 1836. Lester's Land Laws, Vol. 1, page 47).
>
> "That it shall be lawful for the President of the United States, by and with the advice and consent of the Senate, to appoint a Secretary * * * whose duty it shall be, under the direction of the President, to sign his name, and for him, all patents for lands sold or granted under the authority of the United States." (Section 6, Act of Congress approved July 4, 1836. Lester's Land Laws, Vol. 1, page 47).

The Act provides that all laws in conflict with this Act are repealed and especially refers to the Act, approved April 25, 1812.

March 3, 1841, there was passed an Act to confirm land patents inasmuch as there were outstanding patents which had been executed not in accordance with the strict letter of the law. The Act provides:

> "That all patents for public lands, which have been issued from the General Land Office since the passing of the Act * * * passed on the 25th day of April, 1812, in the name of the **President of the United States** as prescribed in the eighth section of said act and all patents for public lands, which have been issued from said General Land Office since the passing of the Act entitled, "An Act to reorganize the General Land Office, passed July 4, 1836, and which have been countersigned by the recorder of the General

Land Office, as prescribed in the Act April 25, 1812, and all patents which have been issued from said General Land Office since the passing of the Act entitled, "An Act prescribing the mode for which patents for public lands shall be signed and executed, passed March 2, 1833, and which have been subscribed by the Secretary duly appointed, pursuant to the provisions of said Act, with the printed or written name of the President prefixed to the personal signature of such Secretary, in the execution of such patents, notwithstanding the name of the President may not have been written personally by the Secretary, shall be deemed, taken, and held good and valid patents in law, and shall have all the force and effect to pass from the United States to the patentee or patentees named in such patents, respectively, their heirs, executors, administrators and assigns the lands described therein, as though in each and all respects before enumerated, the patents in the form and manner of execution, had conformed to the requirements of law."

That from and after the passage of this Act it shall be the duty of the Recorder of the General Land Office, in addition to the duties now required by law, to countersign all patents issued from said office, instead of the same being countersigned by the Commissioner, as required by the eighth section of the Act * * * passed April 25, 1812." (Act of Congress approved March 3, 1841. Lester's Land Laws, Vol. 1, page 58).

It will be recalled that Congress passed an Act, approved March 2, 1833 (Lester's Land Laws, Vol. 1, page 44), authorizing a duly appointed Secretary to sign for the President of the United States patents. In 1848, further provisions were made:

"That if any time the number of patents for lands sold or granted under the authority of the United States, shall be such that they can not be signed in reasonable time by the Secretary appointed for that purpose * * * in that case the President shall be, and he is hereby authorized to appoint an Assistant Secretary, to sign the same; but the said assistant shall be employed by the express direction of the President, and only for such time as may be necessary to bring up the arrears of patents which may be ready for signature." Act passed January 26, 1848. (Lester's Land Laws, Vol. 1, page 132).

The foregoing Act is an amendment to Section 6 of an Act to reorganize the General Land Office, approved July 4, 1836.

TO WHOM A PATENT MAY BE MADE

Prior to the 20th day of May, 1836, a patent made to a deceased person was absolutely void, but by an Act of Congress approved on that date, it is provided:

"That in all cases where patents for public lands have been or may hereafter be issued, in pursuance of any law of the United States, to a person who has died, or who shall hereafter die, before the date of such patent, the title to the lands designated therein shall inure to, and become vested in, the heirs, devisees, or assignees, of such deceased patentee, as if the patent had issued to the deceased person during life. (Lester's Land Laws, Vol. 1, page 7.)

This Act was construed in the case of Galloway vs. Finley, 12 Peters, U. S. 264. Also, the case of McDonald vs. Smoley, 6 Peters 261, gives the conditions prior to the passage of the relief as set out in the previous Act.

It became necessary to give affirmative relief to the heirs of deceased soldiers for the reason that many had died before the issuance of patent and the heirs or devisees were unknown, so Congress by a Joint Resolution relating to bounty lands, March 3, 1843, passed the following:

"That in all cases where a soldier of the Revolutionary War, or a soldier of the last war, was entitled to bounty lands, has died before obtaining a patent for the land, and where application by a part of the heirs of such deceased officer or soldier for such bounty land, it shall be the duty of the proper officers of the War Department to issue the warrant or patent in the name of the heirs of such deceased officer or soldier, without specifying each; and the patent so issued in the name of the heirs generally, shall inure to the benefit of the whole, in such portions as they are severally entitled by the law of descent in the State or Territory where the officer or soldier belonged at the time of his death." (Lester's Land Law, Vol. 1, page 92)

Under the Homestead Law of 1862, if a homesteader dies, and his death is disclosed by the record, leaving no widow but both adult and minor heirs, the patent should issue to the heirs equally. If the entryman made a will and it is disclosed by the record, and there is no widow nor minor heirs, the will will pass title to the devisees.

A Patent issued to the heirs of a deceased person does not give any title to the descendant which can be sold for debts of the decedent.

The Department in construing the Act of 1843 with reference to the issuance of patents to the heirs of deceased soldiers refused to issue patent to a soldier who had sold his discharge, prior to the issuance of his warrant. The Department had before it the case of Napoleon B. Lowther for a patent for a tract of land located by warrant, to which he was entitled, for services rendered in the War with Mexico, notwithstanding Lowther acknowledged having sold his Discharge prior to the issuance of the warrant. The Secretary gave for his reason:

"This Department has already decided not to interfere between parties, in case like the present, but to leave the matter for judicial examination and settlement. The law, it is true, declares all sales or transfers, made prior to the issuing of a warrant, to be null and void, but as the claimant himself was a party to this illegal act, the Department does not feel called upon to aid him in annulling a contract, which he entered into of his own volition, for a consideration." (Dated April 17, 1851.) (Lester's Land Laws, Vol. 1, page 611.)

SALES OF THE PUBLIC LANDS OF THE UNITED STATES

The first Indian Treaty extinguishing the Indian Title was effected in 1795, but in less than a year, after the definite treaty of peace in 1783, Congress of the Confederation took the initial step for establishing a system for the disposal of the "western lands." May 20th, 1785, an ordinance was passed by which the Board of the Treasury was authorized to dispose of the surveyed lands in the western territory, beginning with New York or Philadelphia, with power to adjourn to any part of the United States. The system of the sale was perfected by 1820. The methods of sales divided themselves into two general classes, designated respectively, the **minimum** of $1.25 per acre, and the **double minimum** of $2.50 per acre. The tracts could be purchased in parcels of from 40 to 640 acres, or in larger bodies if the same could be found vacant. For a period beginning with the last century the lands were sold on a credit, at not less than $2.00 per acre, but this method proving unsatisfactory it was abandoned in 1820 and the price was reduced to $1.25 per acre. The $2.50 per acre lands are such as lie within the limits of a railroad or an internal improvement grant. The rule just stated has some exceptions under pre-emption and homestead rights. The lands to be sold are first required to be surveyed, then advertised as required by law and exposed to public auction. In the early history of the sale of public lands, Congress, in some cases, fixed by law the times at which public sales should be held, but as a usual

thing the sale or date of sale is fixed by proclamation of the President, or public notice given in accordance to directions from the General Land Office. On payment of the purchase money the Receiver of the local land office issues his receipt and the same is noted on the Tract Book.

PRIVATE ENTRY OF LANDS

The term entry has been well defined in the case of Chatard vs. Pope, 12 Wheat. (U. S.) 586 as being "that act by which an individual acquires an inceptive right to a portion of the unapportioned soil of the country by filing his application for the same in the office of the designated land agent of the Government, for the right to purchase at private sale." After such petition has been filed with the Register, and payment made to the Receiver for such land entered, the application together with the receipt of the payment and the certificate of the local office is forwarded to the General Land Office for official action. Patent is usually delayed for some months, and quite often conveyances are made before patent issues. In some jurisdictions, Minnesota, Alabama, and Wisconsin, the practice of dating the legal title from the date of entry is followed. It should be remembered, however, that nothing but patent passes the legal title, except in those cases of a grant **in praesenti** by Congress.

The recitals of the Entry forms the first statement of the abstract of all lands acquired in this manner, whenever possible, and should be followed by the Receiver's duplicate certificate of purchase and payment.

TITLE CONFERRED BY ENTRY

Where the entryman has complied with all the terms and conditions which entitle him to a patent for a particular tract of land it may be said that such entryman has a vested interest, and may be regarded as the holder of the equitable interest, the Government simply retaining the legal title in trust. (Worth vs. Branson, 96 U. S. (8 Otto) 188). The interest acquired by entry such as mentioned has been held as being subject to a valid transfer or assignment. (Hutchings vs. Low, 15 Wall, 88). If the assignment is filed with the Register of Land Office patent will issue to the assignee. (Holding of the Department, August 30, 1855.)

The effect of entry in form prescribed by law is to segregate the same from the public domain and subject it to private ownership with all the liabilities as such attached to it. No one can enter the lands so held, but the Commissioner of the General Land Office may cancel the entry any time prior to the issuance of patent upon proof that the entryman has failed to comply with the law.

FORM NO. 1

As a proper form for abstracters to use in abstracting entry certificates we suggest the following:

UNITED STATES OF AMERICA — ENTRY CERTIFICATE

TO — DATED:

(Here insert name of entryman) — ENTRY BOOK_____,

_____ — PAGE_____.

LANDS ENTERED ARE:

(Here insert the description of land being abstracted as described in entry certificate.)

PREEMPTION CLAIMS

The policy of securing to individuals a preference right to purchase a limited quantity of land, which they had improved and inhabited, is an old one. Congress under Act of March 3, 1807, which was prior to pre-emption laws prohibited intrusion on the public lands. The anomaly was thereby created of rewarding those whom an existing law provided penalties against as trespassers. By the Act of Congress May 29th, 1830, pre-emption rights were granted to every settler or occupant of public lands who was in possession at the date of the law, and had cultivated any portion of the land not exceeding 160 acres. This Act was limited in duration to one year, but by subsequent Acts, approved July 14, 1832, March 2, 1833, June 19, 1834, June 22, 1838, and June 1, 1840, the pre-emption privilege was not only extended to a later date, but included a larger class of persons. These Acts had a retrospective bearing and were limited in operation. Therefore, September 4, 1841, an Act prospective in nature was passed and this together with the supplemental act of March 3, 1843, entirely superseded the pre-emption laws referred to as being retrospective in nature. The legal effect of the pre-emption right is well discussed in the case of Lytle, et al., vs. State of Arkansas, 9 Howard 333. The Court said: "The claim of pre-emption is not that shadowy right, which by some it is considered to be. Until sanctioned by law it has no existence as a substantive right; but when covered by law becomes a legal right, subject to be defeated only upon a failure to perform the conditions annexed to it. It is founded in an enlightened public policy, rendered necessary by the enterprise of our citizens. The adventurous pioneer who is found in advance of our settlement, encounters many hardships, and not infrequently dangers from savage incursions. He is generally poor, and it is fit that his enterprise should be suitably rewarded by the privilege of purchasing the favorite spot selected by him, not to exceed one hundred sixty acres."

THE NATURE OF THE RIGHT OF PRE-EMPTION

First, the right of pre-emption can not attach to any lands other than those subject to the operation of the general land system of the country. No title is conferred and no rights, except the right to purchase and acquire title subject to certain conditions and within a prescribed time. No vested interest can be acquired by mere settlement. (Burgess vs. Gray, 16 How. 48). It is not an estate under the common law. It can not be devised. But if the pre-emptor dies without establishing his claim within the limited period under the law, the title may be perfected by his personal representative or his heirs.

The benefits of pre-emptions being personal, all assignments of the rights secured thereby are null and void. Since the Act of 1841, however, the right to sell has been freely exercised after the claim has been proved up, but in that event there is danger, for the reason that the Department does not part with its jurisdiction until after the issuance of patent. If for any reason the Department should open the case, and reject the final proof, the pre-emptor could not again make the final proof for the reason he could not make the declaratory statement that he had not sold the lands.

GRADUATION ENTRIES OF LANDS

By Act of Congress August 4, 1854, a provision was made for the sale of the public lands to actual settlers and cultivators on a graduated scale of 12½ cents to $1.00 per acre, and applied to lands which had been in the market for ten years or more. It was repealed by Act of Congress June 2, 1862. No assignments could be made under the act, and the method of

acquiring the land was similar to that of the pre-emption laws. According to the report of the Commissioner of the General Land Office, more than 26,000,000 acres were sold under this Act. (See Act in Sup. Vol. 1-237, Lester's Land Law.)

THE HOMESTEAD LAW OF 1862

The Act of May 20, 1862, was passed for the purpose of encouraging settlers to seek homesteads. The quantity of land could not exceed 160 acres and is given to any person, the head of a family and possessing other requisite qualifications on condition of settlement, cultivation and occupation, for a definite period of time. He is not allowed to abandon the tract, nor is he permitted to be absent therefrom for more than six months at a time. The law requires that the land must be located in one body in conformity to the legal subdivision of the public lands. The applicant is required to file with the Register of the land office in the land district in which the land is located setting forth in affidavit the requirements qualifying him as such person entittled to a homestead, together with a small fee, for which the Register will issue the receipt of his office to such applicant. The entryman perfects his homestead rights by complying with the law as to residence, cultivation and improvement, and at the expiration of the period of time required under the law, he may either commute by paying a designated sum per acre, and get patent, or he may make final proof thereby securing patent for a nominal sum.

The sale of a homestead claim before completion of title vests no rights in the purchaser. If the entryman dies before patent issues, or before the right to demand a patent has accrued the land does not become a part of the estate. His heirs become entitled to patent, not for the reason of being heirs of the deceased, but because they are considered as new homesteaders and are allowed the benefit of the residence of the ancestor. (Gjerstadengen vs. Dan Duzen, 7 N. Dakota 612.)

MILITARY LAND WARRANTS

Military Land Warrants, after the Revolutionary War, were issued as a reward for devotion and patriotism to the men engaged in the service. The warrants or certificates could be filed in any of the land offices of the United States and such certificate could be used in the location of any of the Government's unappropriated lands. By an Act of Congress of March 22, 1852, these military warrants, or certificates, were assignable, and the assignee under such assignment became vested with all the rights of the assignor. The Wisconsin Supreme Court in the case of Nichols vs. Nichols, 3 Pin (Wis.) 174; Stephenson vs. Wilson, 37 Wis. 482), held that all assignments and locations as well as deeds of lands so located prior to the issuance of patent, if made prior to March 22, 1852, were invalid.

BOUNTY LAND WARRANTS

The Act of Congress, approved August 14, 1848, provided that any non-commissioned officer, musician or private, or his widow or heirs, who shall receive and hold in his own right a land warrant, issued by the Government of the United States for military service, may locate the same on legal subdivision, on any public land subject to private entry, taking said land at the price at which the same is subject to private entry, and reckoning the warrant at $1.25 per acre for the number of acres therein contained, and paying the balance, if any, in money.

Later, September 28, 1850, Congress passed an Act providing that each of the surviving, or the widow or minor children of deceased commissioned and non-commissioned officers, musicians or privates, whether of regulars, volunteers, rangers or militia, who performed military service in any

regiment, company or detachment in the service of the United States, in the war with Great Britain, declared by the United States, June 18, 1812, or in any of the Indian Wars since 1790, and to each of the commissioned officers who were engaged in the military service of the United States, in the late war with Mexico, shall be entitled to lands as follows:

"Those who engaged to serve twelve months and actually served 9 months shall receive 160 acres, and those who engaged to serve six months and actually served four months shall receive eighty acres, and those who engaged to serve any indefinite period and actually served one month shall receive forty acres."

AS TO LOCATION UNDER THE ACTS HERETOFORE GIVEN

Usually three methods of location were practiced: (1) By the warrantee, or other legal owner of the warrant; (2) By the warrantee, or other legal owner of the warrant, through the agency of the Land Office; (3) By an agent or attorney of either of said parties.

The patent under the various locations was transmitted to the land office where the location is made, unless special directions to the contrary were given.

TITLE CONVEYED BY PATENT

The Patent is the highest evidence of title known to man and is conclusive against the United States and every person holding under a junior patent until set aside or annulled by a court of competent jurisdiction. When delivered and accepted by the patentee it passes the full legal title and carries with it the presumption that all prerequisites and formalities have been complied with. However, if void upon its face there would be no such presumption as to prerequisites and formalities.

While the legal title remains in the Government until the issuance of patent, and the equitable title in the purchaser or entryman, the ultimate issuance of patent does not convey a new or independent title disconnected with the equitable, but on the other hand converts the inchoate or equitable title into a perfect legal one, which enables the patentee to seek and to maintain legal remedies, which prior to that time, in the absence of statute, were confined to courts of equity. As soon as the purchaser pays the price and receives the certificate, the contract of purchase becomes complete and the lands are segregated from the public domain and become private property. The Government thereby holds the naked legal title for the purchaser. The certificate in so far as the Government is concerned in dealing with the land amounts to a patent.

The patent passes all the interest of the United States Government, whatever it may be, to the lands therein described, and everything connected with the soil. Under the common law the patent conveys title to the streams and their beds. If the stream is not navigable, unless restricted by the terms of the grant, the patentee holds to the middle of the stream, where such stream is a boundary, while in some cases of navigable rivers the title of the riparian proprietor would stop at the stream.

REQUIREMENTS AS TO THE EXECUTION OF PATENTS

To conform strictly to the letter of the law, the patent must be signed in the name of the President by his duly authorized Secretary, signed by the Recorder of the General Land Office and sealed with the seal of the General Land Office. Until these have been done no valid patent has been issued. Each requirement is mandatory. (McGarrahan vs. Mining Co., 96 U. S. 316.) Delivery of a patent is not essential to its validity, nor will non-delivery defeat the grant.

The purchaser from one holding under a patent is not bound to look

behind the patent to learn if properly issued (Schnee Vs. Schnee, 23 Wis. 377.) The patent itself is presumptive evidence that all proceedings have been regular. Winter vs. Cromlin, 18 How. 87.) But every purchaser is presumed to have notice of defects apparent upon the face of the patent and is furthermore chargeable with all recitals of the same. (U. S. vs. Land Grant Co. 21 Fed. Rep. 19, and Bell Vs. Duncan, 11 Ohio 192.)

METHOD OF PROCEDURE TO CANCEL PATENTS

There are two methods of procedure for the cancellation of patents for sufficient cause, namely: Direct Attack and Collateral Attack. The direct attack is made by procedure in the Federal Courts on the equity side, while the collateral attack is a local proceeding unless for some reason of diversity of citizenship or other matters of jurisdiction will give to the Federal Courts jurisdiction over the case.

In the direct attack there are two methods of procedure and are as follows: First, make a preliminary proceeding by filing a petition, alleging fraud, accident or mistake, with the General Land Office and ask for a preliminary hearing of the allegations. If the Department authorizes a hearing and the allegations are sustained the Department will refer the matter to the DEPARTMENT OF JUSTICE with its recommendations, and the Department of Justice will file suit in the name of THE UNITED STATES for the cancellation or for vacating the patent. Second: The second method is to file a petition in the Federal Court in the District in which the land lies, setting forth necessary allegations to give jurisdiction.

It is a settled policy that the United States Government will not attack its own duly and regularly issued patent without clear and convincing proof that fraud has been used in procuring its issuance, and then such procedure will not be entertained if the lands have passed to an innocent purchaser. (10 L. D. 449; 6 L. D. 345.) Nor will the Government advise nor take action where title passes under a full knowledge of all the facts, and has remained undisturbed for a number of years and is held by a transferee in good faith. (8 L. D. 165.)

Furthermore the Government will not interest itself in the cancellation or vacating of a patent unless it has an interest to protect or a right to defend (13 L. D. 559). The right to bring suit by the Government for the cancellation of patents exists only where patent has been secured by fraud, or where the Government is under obligation to make title good. (13 L. D. 559.) In no case will action be taken without due notice being given the patentee.

The effect of a final decree of a court vacating a patent operates to revest the title in the United States, and the land does not become subject to entry or appropriation unless so restored by the Land Department. (37 L. D. 115.)

The Second Method of Procedure: The second method for the cancellation of patent for fraud or imposition in procurement is to file suit in the Federal Court, equity side, in the district in which the land is situated. The allegation must be such as to show that the fraud or imposition induced the Government to issue title or patent. There can be no doubt but that it is the duty of the officers of the Land Department to determine the facts to whom patent shall issue for public lands. The law has intrusted them with that duty, and when performed all reasonable presumption will be exercised and indulged in to support their action. As to all matters of facts within the scope of their authority their findings must be taken as conclusive in the absence of fraud or imposition. (Johnson vs. Towsley, 13 Wall, 72; Moore vs. Robbins, 96 U. S. 530, Smelting Co. vs. Kemp, 104 U. S. 636.)

The party plaintiff must not only show a clear case of fraud or imposition, but must show injury to him. (Bohall vs. Dilla, 114 U. S. 47 Sparks vs. Pierce, 115 U. S. 408.)

COLLATERAL ATTACK OF PATENTS

It may be said as a general proposition that a patent cannot be collaterally attacked unless it is void upon its face, or its recitals are such when taken in connection with existing laws the courts will take judicial knowledge of its invalidity upon its reading. The following statements are in conformity with the general propositions:

(1) A Government patent may be impeached collaterally by showing a prior conveyance by the Government of the same land.

(2) It may be impeached by showing that at the time of the issuance the lands conveyed were reserved from sale or disposition.

(3) Where the land conveyed had been previously dedicated for a special purpose.

(4) Where the land conveyed had been withdrawn for the reason of being within a grant to a railroad or other internal improvement.

(5) Where the land has been reserved by a clause in a Spanish or Mexican grant.

(6) Where Congress has made no previous provision for the disposition of such lands.

(7) Where the land is not subject to entry,—such as where it has mineral deposits.

(8) Where the Land Department has acted without jurisdiction.

These general principles as set out brings the matter of collateral attack well within the first principle enunciated, and that is; it must be void upon its face, or by reading it the court can take judicial knowledge of the recitals. A patent from the Federal Government is conclusive evidence of certain facts in State courts, but in Federal courts such is not the case. A patent duly issued by the United States Government is conclusive in a state court that the land was subject to patent.

CHAPTER FOUR

SPANISH GRANTS

There are many Spanish Claims in Florida, bordering on the East coast and up and down the St. John's River. Also around Pensacola are to be found many of these old Grants. Some of them date back to the early part of the eighteenth century.

It will be recalled that Section 8 of the Treaty between the United States and Spain whereby the United States acquired title to the Floridas this matter of protecting private rights either by grant or purchase was provided for. On May 8, 1822, Congress passed an Act, entitled "An Act for ascertaining claims and titles to lands within the territory of Florida." Briefly the Act provided for the determination of such claims by land Commissioners, and in the case of McGee et al vs. Doe et al. 9 Florida 382, the Court defined the duties and powers of the Commissioners under the act in the following language:

> "The report and abstract of the Land Commissioners appointed under the Act of Congress, approved May 8, 1822, entitled "An act for ascertaining claims and titles to lands within the territory of Florida," in regards to claims and titles to lands in Florida, whether under grants from the Spanish Government or by purchase from said Government, are not final, and can not have the force of **res adjudicata,** nor deprive them of any rights which they may have had previous to said report and abstract or decision. That the object for which the Commissioners were appointed was to enable the Government to ascertain the Spanish grants and sales and their location, so that they might be separated from the public domain, and not sold as public lands. That for this purpose they constitute a board of inquiry, not a court exercising judicial power and deciding finally on titles."

When the Floridas were purchased by the United States from Spain and the American flag raised over St. Augustine and Pensacola July 10 to 21, respectively, in the year 1821, the United States had to recognize the confirmed claims. The Board of Commissioners provided for in the Act of Congress approved May 8, 1822, has since found others to be valid. In the Department of Agriculture, at Tallahassee, classified under the head of the "Division Field Notes," which was created by an Act of the Legislature of 1907, is to be found the old Spanish claim and purchases classified into two classes: namely, "Confirmed" and "Unconfirmed."

The supreme court of Florida in the case of Keech et al. vs. Enriquez et al., 28 Fla., 597 in interpreting the eighth section of the Treaty of Feb. 22, 1819, used the following language:

> "The operation of the 8th article of the Treaty of February 22, 1819, between the United States and Spain, for the cession of the Florida, was to confirm as grants of purchase **in praesenti all grants** and purchases made of lands in Florida by or of the Spanish Government anterior to the date fixed in said Treaty, without further action on the part of the United States through its congress."

The Court quoting previous decisions of McGee vs. Alba, 9 Fla., 382, and Logan vs. 13 Fla., 602; Henry Keech et al vs. Enriquez et al, 28 Fla., 597.

CHAPTER FIVE

LEGISLATIVE GRANTS GENERALLY CONSIDERED

Many titles have their foundation in Congressional grants, legislative grants or acts of confirmation. It is the opinion of the Attorney General that they constitute the highest title known to law. When an Act of Congress purports to convey lands in words of present grant it is equally as effective as a patent and vests irrevocable title. (Opinion of Attorney General.)

The only difference between a legislative grant and patent is in the former the act is a direct act of the Legislative body and in the latter it is a ministerial act. An Act of Congress, containing provisions clearly indicating an intention to pass title unconditioally operates ipso facto to vest title in the grantee. (Grignons, Lessee, vs. Astor, 2 How. 319; Ballance vs. Tesson, 12 Ill. 327.) But if the grant be coupled with a condition it will not operate to vest title until such condition has been fulfilled. (Thompson vs. Prince, 67 Ill. 284.)

An Act of Congress granting land to one person is higher evidence of title than a patent subsequently granted to another. (Dousman vs. Hooe, 3 Wis. 566.) Legislative grants and confirmations are usually followed by patents, but the patent in no sense enlarges the force of the grant, but is merely confirmatory of what has preceded. (Langdeau vs. Hanes 21 Wall (U. S.) 524; Swann vs. Lindsey 70 Ala. 507; Dean vs. Bitner 77 Mo. 104.)

The Government has no power to withdraw or annul its grant. (Opinion of Atty. General.)

CONSTRUCTION OF A LEGISLATIVE GRANT

The courts have almost universally held that legislative grants are executed contracts, and as such are within the clause of the Constitution which prohibits the legislature from passing acts impairing the obligation of contracts. (Binghampton Bridge 3 Wall (U. S.) 51; Dartmouth College vs. Woodward 4 Wheat (U. S.) 625.) The examiner should remember that in construing a grant, that he is construing the law as well as a grant of conveyance, and the effect given it must be in the light of carrying out the intention of Congress. The rule of construing the grant most strongly against the grantor is reversed in congressional grants.

ACTS OF CONFIRMATION OR TITLE BY CONFIRMATION

Confirmation at common law is a specie of conveyance whereby an estate voidable or inchoate, is made valid and certain or where a particular interest is increased. While deeds of confirmation are used as between individuals, the term is usually applied to acts of Government whereby inchoate or uncertain rights derived from the national government or from foreign powers are ratified and approved.

From the earliest period of history, claims to tracts of lands upon which persons had settled and made improvements in advance of public surveys and before the lands had been offered for sale, and other equitable interests, have arisen for adjustment. These claims have been settled in various ways; sometimes by a Board of Commissioners appointed for that purpose and sometimes by judicial proceedings. Also, often by acts of Congress. A CONFIRMATION CANNOT STRENGTHEN A VOID TITLE, BUT ONLY ONE THAT IS VOIDABLE AND IS CONCLUSIVE ONLY AS BETWEEN THE GOVERNMENT AND THE CONFIRMEE. (Meader vs. Norton, 11 Wall 442.) The weight of authority supports the theory that the legal title to lands confirmed to a private person by Act of Congress or by action of Government tribunals remains in the United States until

a patent is issued therefor, and until then the confirmee has only an equitable title. (LeBean vs. Armitage, 47 M. 138; Amestri vs. Castro, 49 Cal. 328.) However, in the settlement of these claims the law has generally provided that a Patent of the United States should be issued to the claimant when his claim should have been recognized as valid and entitled to confirmation, yet the patent, in such cases, is only documentary evidence of the existence of the title, or of equities respecting the claim as to justify recognition and confirmation. (Morrow vs. Whitney, 5 Otto (U. S.) 551; Lagdeau vs. Hanes, 21 Wall (U. S.) 521.) A patent issued by reason of confirmatory act is nothing more than documentary evidence.



CHAPTER SIX

SCHOOL LANDS

The new states created out of the territory of the United States have always had at the period of their admission into the Union large acreage of vacant and unappropriated lands within their limits. Coming into the Union as members of the Federal alliance, with all the rights of independent States, subject to the Constitution of the United States, they would have the unquestioned power to tax for state purposes all the lands within their limits, whether belonging to the Federal Government or to individuals. To guard against the exercise of state power, it has been the practice of the Government, from our earliest history, to enter into a compact, as follows with the State seeking admission into the Union by which the United States agrees to transfer to the State one section of land in each township for "use of schools" and five per cent of the net proceeds of the sale of public land lying within the State, after deducting all expenses incident to the same for public education.

> "Provided that the foregoing proposition herein offered is on the condition, that the said convention which shall form the constitution of said State, shall provide by a clause in said constitution, or an ordinance, irrevocable without the consent of the United States that said State shall never interfere * * *
>
> (1) With the primary disposal of the soil within the same by the United States; nor with any regulation Congress may find necessary for securing the title in such soil to bona fide purchasers thereof; (2) That no tax shall be imposed on lands the property of the United States; and (3) and, in no case shall non-resident proprietors be taxed higher than residents."

By the enabling act of admission the State of Florida was invested with the legal title to every sixteenth section, according to the surveys, irrespective to the character of lands embraced or upon which it was located, and in case of disposal thereof the right to indemnity existed in the same character of lands. (Holding of Department of the Interior with reference to State of Ala., 6 L. D. 493.) No act upon the part of the Government or its duly authorized agent is necessary to vest title to the State in the 16th section except when such section has been previously disposed of in some way. By Act of Congress, approved March 3, 1845, a present grant was made to the State, an extract of which is as follows:

> "That in consideration of the public concessions made by the State of Florida in respect to the public lands, there be granted to said State * * * * * section number 16 of each township, or other lands equivalent thereto for the use of the inhabitants of that township for the support of public schools. * * *"

LANDS IN LIEU OF THE SIXTEENTH SECTION

In the event that section sixteen fails to pass by reason of pre-emption claims or other legal hindrances Sections 2275 and 2276 Revised Statutes, Acts of Congress provide means of making selection in lieu of the section lost.

In case the 16th section is covered by settlement claim, or otherwise disposed of the State is entitled to indemnity in lieu of lands covered by settlement at the date of survey. (7 L. D. 270.) The right to select lieu

land vests immediately upon the legal ascertainment that a school section is reserved for public or other use. (3 L. D. 327.)

The character of the land and the value thereof depends upon the character or value of the 16th section lost by reason of settlement claim or otherwise. The State is entitled to select indemnity of the character and class it would have received had there been no deficiency. (18 L. D. 343.)

In case of fractional townships, where it is made so by reason of a permanent body of water, and what would otherwise be a school section cannot be surveyed on account of said body of water, the area of the land within the township susceptible of survey determines the quantity of indemnity school land to which the State is entitled under Sections 2275 and 2276 R. S. (37 L. D. 430.) On the other hand where what, if susceptible of survey, would be an entire township is covered by a permanent body of water, the State is not entitled to indemnity for the school section thereby lost from its grant. (Supra.)

WHAT IS REQUIRED OF THE STATE IN THE SELECTION OF INDEMNITY LANDS

When it is apparent that the 16th section for some reason can not vest in the State, it becomes necessary for the State to take an affirmative step in the selection of lands in lieu of the amount and character lost. The State will in all cases be required to make its selection, certify that the lands selected in lieu of the grant to it have not been sold and are non-encumbered, regardless of whether the land has been surveyed or not. The certificate of non-sale and non-encumbrance of lands designated as base for school indemnity selection is an affirmative act and is mandatory upon the State.

WHEN TITLE TO INDEMNITY LAND PASSES

As has been before stated no transfer or conveyance from the United States Government to the State is necessary where the land is embraced within the 16th section, for the act itself absolutely vests title to the 16th section of every township for school purposes and the abstracter has only to refer to that act in the preparation of his abstract.

However, in the selection of lands in lieu of the 16th section, or any part thereof, lost to it by reason heretofore explained it becomes necessary for the abstract to show affirmatively the procedure in the case. The Department of the Interior has repeatedly held that title passes at the time of selection and approval of the same by the department. In other words the State acquires no title by virtue of a School Indemnity selection until the same has been duly approved and certified by the Secretary or his duly authorized agent. (39 L. D. 491.) A purchaser of the State's interest in indemnity lands prior to certification acquires no rights thereby (18 L. D. 245). Selection, certification, and approval passes the title to school lands as fully as though transferred by patent and the Department is without authority to set aside said certification and cancel the selection (9 L. D. 106, 636).

As a proper form for abstracters to use in abstracting any Section 16 granted to State for school purposes we suggest the following:

FORM NO. 2

UNITED STATES OF AMERICA TO STATE OF FLORIDA	GRANT BY VIRTUE OF ACT OF CONGRESS APPROVED MARCH 3, 1845, AND ACTS SUPPLEMENTAL THERETO. United States Statutes at Large, Volume 5, Page 788.

LANDS GRANTED:

SECTION 16, TOWNSHIP.....RANGE.....
was granted to the State of Florida for the Use of Schools, by Act of Congress, Approved March 3rd, 1845, and accepted by the State of Florida under the enabling act of admission of said date.

"In consideration of the concession made by the State of Florida in respect to Public Lands there be granted to said State Section Sixteen in every Township or other lands equivalent thereto for the use of the inhabitants of such Township for the support of public schools."

WHEN TITLE TO SCHOOL LANDS TAKES EFFECT:

The Act of March 3, 1845, was a grant **in praesenti** and the title takes effect at the time of the approval of the Act, without Patent or Certificate (14 L. D. 681.) The Supreme Court of the State, in the case of State vs. Jennings, 47 Fla., 307, 35 So. 986), reiterated the holding of the Department of the Interior in the following language:

> "The Act of Congress of March 3, 1845, granting school lands to the State of Florida was in the nature of a compact between the State and the United States Government, and was a special grant **in praesenti** of every sixteenth section in every township which previous to survey had not been disposed of under legal authority from the Government of the United States, and when by survey the sixteenth section or fractional part thereof as ascertained to exist in any township, the grant immediately attaches thereto, without Patent by relation back to the date of said Act of Congress."

The Department of the Interior holds in line with the decision above:

> "The title to the State vests, if at all, at the date of survey, and if the land is in fact mineral, though not then known to be such, the subsequent discovery of it will not affect the title to the State." (6 L. D. 412.)

Thus it will be seen that no action is necessary on the part of the Department to transmit title to the State, except where lieu selections have been made. In that case the selection by the authorized Agent of the State, and the approval by the Secretary of Interior passes title as effectively as by patent. The abstract should show the Certificate for Indemnity Lands and the following Form is suggested:

FORM NO. 3

UNITED STATES OF AMERICA
TO
STATE OF FLORIDA

SCHOOL INDEMNITY LIST NO.....
DATED: .....
DATE APPROVED BY THE DEPARTMENT: .....

The following lands were embraced in Certificate No.....
of Approved School Indemnity List No.....insofar as the same relates to lands in.....County, Florida.
Cause of Deficiency: .....
In lieu of Section 16 Township.....Range.....
Date of Seclection: .....

Land seclected—(Here insert description of land seclected as described in list.)

(Said lands were selected by the duly authorized Agent of the State, certified to the Commissioner of the General Land Office, together with the Certificate of Non-Sale and Non-incumbrance as lands selected in lieu of lands lost to it by reason of the failure of the sixteenth section to pass to it under Act March 3, 1845, and found upon examination by the Commissioner to inure to the State of Florida, and by the Commissioner certified to the Secretary of Interior for his approval, and by said Secretary duly approved and a copy certified to the authorized agent of the State for its files.)

Note: Certified photostatic copies of School Indemnity Lists insofar as it affects the county in which you are abstracting can be secured for a nominal sum from the Commissioner of the General Land Office at Washington, D. C. In writing for such List refer to Bureau "G."

COLLATERAL REFERENCES

Act of Congress, March 3, 1845 (Lester Land Laws, Vol. 1, page 107.)

Act of Congress, July 2, 1862 (Lester's Land Laws, Vol. 2, pages 59-61.)

Act of Congress, April 14, 1864 (Lester's Land Laws, Vol. 2, pages 87-88.)

Act of Congress, July 23, 1866 (Same, Vol. 2, page 176.)

Confirmation of Claims, Act of Congress approved Aug. 3, 1854 (Lester Land Laws, Vol. 1, pages 241, 242.)

Settlers, Act of Congress, Feb. 26, 1859 (Same, Vol. 1, page 306.)

Board of Education, See the following:

McClelland's Digest, page 924; how lands conveyed, General Statutes of 1906, Sec. 2458; Sections 636-642 Florida Compiled Laws; Validating Statutes, see Gen. Statutes of 1906, Section 2478, Section 2478 of Florida Compiled Laws, Section 3820 of Revised General Statutes.

CHAPTER VII

INTERNAL IMPROVEMENT LANDS

Florida became the recipient of five hundred thousand acres of land, known as the "Internal Improvement Lands," under Act of Congress, approved September 4, 1841. The title vesting in the State after its admission into the Union and selection of lands as required by the terms of the Grant, and of the Act of the General Assembly of the State of Florida. The Grant is as follows:

> "There is granted for the purpose of Internal Improvement, to each new State hereafter admitted into the Union, upon such admission, so much public lands as, including the quantity to such State before its admission and while under a Territorial Government, will make five hundred thousand acres (Section 1, Act September 4, 1841.)
>
> The selection of land, granted in the preceding section, shall be made within the limits of each State so admitted into the Union, in such manner as the Legislature thereof, respectively, may direct; and such lands shall be located in parcels conformably to sectional divisions and subdivisions of not less than three hundred twenty acres in one location, on any public land not reserved from sale by the law of Congress or by Proclamation of the President. The location may be made at any time after the public lands in any such new State have been surveyed according to law." (Section 2, Act of September 4, 1841.)

The Act of March 3, 1845, vested title to the State to the five hundred thousand acres, subject to selection or location.

Under the Act of the Legislature, approved December 26, 1845, the Register of Public Lands was authorized to make the selection:

> "He shall make and execute all deeds and conveyances, and deliver the patents for all lands and transfers and other disposition of the public domain. He shall proceed to select and to secure all lands granted by Congress to this State or which may hereafter be granted, as fast as he may be able to do so judiciously, in conformity with the laws of the United States and the State." (Section 4, page 40 of Thompson's Digest.)

For the purpose of assuring a proper application of the funds, the Legislature, January 6, 1855, created a Board of Trustees, consisting of the Governor of the State, the Comptroller, the State Treasurer, the Attorney General, and the Register of State Lands, and the title to all lands so held together with funds arising from the sale of the same was irrevocably vested in these Trustees and their successors in office. (McClelland's Digest, section 2, page 589.)

According to the Report of the Trustees of the Internal Improvement Fund all selections under the Act had been made prior to December 15, 1855. (See Report of the Board of Trustees, Vol. 1, page 5.)

IS THE ISSUANCE OF PATENT BY THE GOVERNMENT NECESSARY UNDER THE ACT OF SEPTEMBER 4, 1841?

The Secretary of the Interior, December 10, 1856, answered the question to the effect that the Act requires no Patent. Extract from the decision:

> "I have not been able to satisfy myself that the Department has any power to issue patents where the law not only does not authorize it to be done, but provides another mode for the passing of title . . and the practice having been in accordance with this view, I deem it proper to adhere to it."

The early decisions are to the effect that the Act of September 4, 1841, is a grant **in praesenti**, requiring only selection by the Agent of the

State and approval by the Secretary of the Interior to vest title in the State. These early decisions are binding upon the Secretaries since that time and are now, for the doctrine of "Stare Decisis" is applicable in the absence of fraud or mistake (Bank of Metropolis vs. United States, 15 Peters, 400.)

As a proper form for abstracters to use in abstracting any Internal Improvement lands we suggest the following:

FORM NO. 4

UNITED STATES OF AMERICA
TO
STATE OF FLORIDA

APPROVED INTERNAL IMPROVEMENT LIST NO. _____
DATE _____
DATE APPROVED BY THE SECRETARY OF INTERIOR: _____

List of lands selected by the State of Florida in _____ Land District under Section 8, Act of September 4, 1841; certified by the Commissioner of the General Land Office as being lands not previously disposed of by the Government, and by the Secretary of Interior approved under said Act.

List No.	Description of Tract	Sect.	Twp.	Rg.	Date of Selection

CHAPTER EIGHT

SWAMP LANDS UNDER ACT OF SEPTEMBER 28, 1850

In almost every state where government lands are to be found, are lands in large parcels overflowed by water. This is particularly so in the states of Louisiana, Missouri, Arkansas and Florida. Not only are the lands not fit for cultivation, but in many instances could not be surveyed, and serve but to infect the states in which located with disease, and were a nuisance, depreciating the remainder of the public domain. The existence of this nuisance was a matter of loud complaint in many states. Congress at last yielded to the demand for drainage and on September 28, 1850, passed an act granting to the states "whole of the swamp and overflowed lands made unfit for cultivation * * * provided, that the proceeds of said sale, whether from sale or by direct appropriation in kind, shall be applied exclusively for the purpose of reclaiming said lands."

So manifest seemed the propriety of this measure granting the "swamp lands" to the states for that purpose, that the bill passed the Senate without a dissenting vote, while in the House the vote was 120 yeas to 53 nays; but eight southern men voting against it.

CONSTRUCTION OF THE GRANT, APPROVED SEPTEMBER 28, 1850

The effect of the Swamp Land Act, was to vest in the states then admitted into the Union, the title to all the swamp and overflowed lands not then sold, and required nothing but the determination of the boundaries to make it complete. (L. D. 256.) The selection of the lands when made related back to the date of the grant. (Fletcher vs. Poole, 20 Ark. 100; Hepstead vs. Underhill, 20 Ark., 337; Hudy vs. Willis, 33 Ark., 833; Michigan Land Co. vs. Rust, 158 U. S. 589.) It may be reiterated that the Grant did not inure to the benefit of any territory, nor does a territory become entitled to swamp land upon its admission to the Union as a state, in the absence of a statute expressly conferring such a grant. (Rice vs. Sioux City ect. 110 U. S. 695.)

A temporary reservation of the lands of the character of swamp and overflowed, prior to the passage of the Act, will not defeat the operation of the grant, but only suspends the operation and removal of the reservation will cause the matter to proceed. (17 L. D. 440.)

The original grant of 1850 was not in any sense enlarged by the Confirmatory Act of 1857 (10 L. D. 393.) Lands which were excepted from the Grant by reason of previous reservation to the Government would not be confirmed to the State by the Act March 3, 1857. (10 L. D. 393.)

The Department is without jurisdiction to order a hearing upon the application of a State to determine the character of land claimed as swamp and overflowed lands, where prior to such claim the lands had been patented to the state for other purposes. (25 L. D. 417.)

While the Act of Congress approved September 28, 1850, is an act in praesenti, IT PASSED ONLY THE EQUITABLE TITLE TO THE STATE, THE LEGAL TITLE OF THE LANDS BEING TRANSFERRED AFTER THE LANDS HAD BEEN SELECTED AND PATENTS DELIVERED TO THE STATE. (Little vs. Williams, 88 Ark. 37.) Until the title passes to the State by the issuance of the patent, the authority of the Land Department to enquire into the validity of the claim under a swamp grant, does

not terminate; and in the exercise of such authority the Secretary of the Interior may properly revoke his approval of swamp selection. (28 L. D. 390.) It may be conclusively determined that the examiner of a land title is only safe when the United Sfates Government has parted with its title.

THE CHARACTER OF LAND, HOW DETERMINED

The determination of whether lands are swamp and overflowed within the meaning of the statute of the Act of 1850 is a question for the sole determination of the Department, and in the absence of fraud the finding of the Department is conclusive, and the Secretary of the Interior is the head of the Department for such purposes. (Heath vs. Wallace, 136 U. S. 573.) If the Secretary fails to perform the duties or refuses to do so in making selection does not in any way impair the state's rights to such lands. The fact as to whether lands are swamp and overflowed may be shown by competent parol evidence. (Wright vs. Roseberry, 121 U. S. 488.) The burden of proof as to whether the lands are of the character within the determination of the statute is on the person or party making claim as to the character. (Wright vs. Roseberry.)

SELECTION OF SWAMP LANDS

The method of selection being left to the states affected by the Act, various modes have been used. Michigan and Wisconsin adopted field notes of surveys as basis of their acceptance, while the other states agreed to ascertain the lands by examination in the field. (1 Lester's Land Laws, page 542.) The word "selection" refers specifically to the act of the grantee. Identification is intrusted to the Secretary of the Interior. (Michigan Land Co. vs. Rust, 168, page 589.) The act of selecting swamp and overflowed lands by the State's agent amounts only to a claim by the state. The Secretary may approve or reject it, just as he wishes. (Smith vs. Hollie, 46 Ark. 17.)

It is necessary to know whether the selection of the state has been approved and confirmed by the Secretary and patent issued therefor to the state, for a patent from the state for lands determined by it in an ex-parte proceeding is not only not conclusive as to the character of lands patented, but is not even prima facie evidence of the character of such lands nor of any matters recited therein. (Hendry vs. Willis, 33 Ark. 833.)

Finally under the Swamp Land Grant, approved September 28, 1850, the Secretary of the Interior is not only the judge of the lands coming within the meaning of the act, but his opinion, in the absence of fraud, is final, and from which there is no appeal. (William vs. Baugh, 71 Ark. 491.)

SURVEY, SELECTION AND CERTIFICATION TO STATE A PREREQUISITE TO SALE BY STATE

By Act of the Legislature, December 26, 1845, there was created in the State of Florida the office of Register of Public Lands, and provided that his office should be in one of the rooms of the basement of the Capitol. Section 4 of that Act prescribed the duties of that officer and among the duties was the act selecting lands granted to the state under various acts of Congress, naming them, or which might be "granted for any other purpose." It further provided that he should execute deeds of conveyance. (For

full details, see Thompson's Digest of the Laws of the State of Florida, pages 40 to 41.)

The duties formerly prescribed for Register of Public Lands were devolved by Act of 1869, Chapter 1727, upon the Surveyor General, and in the following Chapter the words, "Commissioner of Lands and Immigration" are substituted for the words, "Commissioner of Immigration, Surveyor-General, or Register of Public Lands" wherever they occur.

Section 10, McClelland's Digest of the Laws of the State of Florida, page 188, briefly provides that the Commissioner of Lands and Immigration shall be charged with the duty of selecting and securing the various lands which have been or may hereafter be granted to Florida by Congress for any and all purposes. He remained the agent of the State for that purpose until 1889 when the Office of Commissioner of Agriculture was created by Act of the Legislature and that officer took the place and assumed the duties in relation to public lands that had previously been performed by the Commissioner of Lands and Immigration. (Chapter 3857, Acts of 1889, Sect. 1.) Furthermore the Commissioner of Agriculture became one of the Trustees of the Internal Improvement fund in the place and stead of the Commissioner of Lands and Immigration; the Commissioner of Lands and Immigration being constituted a member ex-officio of that body (Board of Trustees of Internal Improvement Fund) by Act of February 1, 1869. (See McClelland's Digest, Sect. 2, page 187.) This Board of Trustees being created by Act of Legislature. (See McClelland's Digest, Section 2, page 589.)

WHEN THE LAND AGENT HAS POWER TO SELL

The land agent has no power legally to receive applications for the purchase of swamp and overflowed lands until the maps are received. (36 Ark., page 334.)

POWER OF THE STATE AS TO THE DISPOSITION OF PROCEEDS

The disposition of the proceeds arising from the sale of swamp land rests solely in the good faith of the state. Its discretion of disposing of them is not controlled by federal statute, as neither a contract nor trust following the land was thereby created. (Hagard vs. Reclamation District No. 108, 111 U. S. 701; Mills County vs. Railroad Co., 107 U. S. 557.) The State of Oregon in the case of Gaston vs. Scott, 5 Oregon, page 48, said that the trust raised by the section in regard to the application of the proceeds arising from the sale of swamp and overflowed lands is a matter of municipal and not judicial concern, over which the State has plenary and conclusive power; and, therefore, a diversion of the proceeds from the purpose expressed in the grant will not operate to defeat the title to the states.

WHO MAY COMPLAIN OF DIVERSION OF PROCEEDS

If a State applied to a purpose other than that indicated in Section 2480, the proceeds of swamp land which it has sold, only the United States may complain of the diversion. Even if the statutes creates a contract, a private person who has purchased such lands from the state can not complain of the breach on the part of the state, for the reason he is not a party to the contract. (Hagar Vs. Reclamation District No. 108, 111 U .S. 701.)

We suggest that abstracters when abstracting patents to swamp lands use the following:

FORM NO. 5

UNITED STATES OF AMERICA SWAMP PATENT NO._____

TO DATED _____

STATE OF FLORIDA FILED _____

BOOK_____ PAGE_____

RECITES: That by an Act of Congress approved September 28, 1850, entitled, an "Act to enable the State of Arkansas and other States to reclaim the Swamp Lands within their Limits," it is provided that all swamp and overflowed lands, made unfit thereby for cultivation within the State of Florida, which remained unsold at the passage of said Act shall be granted to said State; and that pursuant to the instructions of the General Land Office of the United States, the several tracts or parcels of lands hereinafter described have been selected as swamp and overflowed lands inuring to said State under Act aforesaid. . . .

(Here insert the description of land described in patent.)

NOW THEREFORE KNOW YE, That the United States of America in consideration of the premises and in conformity with the Act of Congress aforesaid . . by these presents do give and grant unto the said State of Florida, in fee simple, subject to the disposal of the Legislature thereof, the tracts of lands above described.

TO HAVE AND TO HOLD the same . . . unto the State of Florida, in fee simple, and to its assigns forever.

IN TESTIMONY WHEREOF, _____ President of the United States of America have caused these letters to be made Patent, and the seal of the General Land Office Affixed.

(SEAL) By_____

By_____ Secretary

Recorder of General Land Office.

CHAPTER NINE

GRANTS OF LANDS FOR RAILROAD PURPOSES

Legislative aid of public domain for railroad purposes divides itself naturally into two classes, namely: State Aid and Federal Aid.

STATE AID

It will be recalled that the State of Florida was recipient in the way of a large bounty of land from the Federal Government under the Act of September the 4, 1841, known as "Internal Improvement Lands," and the Act of September 28, 1850, known as the "Swamp Land Grant," supplemented by the Acts of March 2, 1855, and March 3, 1857, permitting the State to select indemnity lands by reason of the Government having disposed of any of the lands which would have passed under the Act of September 28, 1850. Under the former Act, September 4, 1841, the State had received 500,000 acres, and under the Act of September 28, 1850, there had been patented to the State up to January 1, 1925, a total of 20,422,303.70 acres (Eighteenth Biennial Report of the Department of Agriculture.)

The State of Florida as early as 1855 attempted to aid in the construction of railroads within her limits. From the lands granted to the State, both Internal Improvement Lands and Swamp and Overflowed Lands, it used for the purpose of internal improvements. By the Act of January 6, 1855, those lands were set apart for internal improvement purposes. (See McClelland's Digest, section 1, page 589.) To assure the proper handling of the funds arising from the sale of the lands, the Legislature, January 6, 1855, created a board known as the TRUSTEES OF THE INTERNAL IMPROVEMENT FUND, consisting of the Governor, Comptroller of Public Accounts, the State Treasurer, the Attorney General, and the Register of State Lands and their successors in office. (Section 2, page 589 of McClelland's Digest.)

STATE AID IN THE CONSTRUCTION OF RAILROADS:

The first Federal aid given to any state in the construction of railroads was by an Act of Congress, September 20, 1850, granting lands to construct a railroad from central Illinois to Mobile, Ala. The Federal grant was alternate sections for six miles on each side of the roadway.

The State of Florida in its aid to railroads used the Federal Act of September 20, 1850, as a model for its legislation. The Act of January 6, 1855, granted as follows:

> "On the routes indicated for construction of different lines of Rail Roads, the State hereby grants to each of the different roads that may hereafter be constructed portions of such lines or routes, the alternate sections of State lands on each side for six miles." . . . (Section 18, page 595 of McClelland's Digest.)

This grant was more than one year in advance of a Congressional Act to railroads in Florida. The State in anticipation of a grant by Congress provided in the Act of January 6, 1855, authorized the Governor to select such lands as might be granted by Congress. (See Section 23, page 596 of McClelland's Digest.)

Of the 20,422,303.70 acres of land patented to the State under the Act of September 28, 1850, there has been conveyed to the various railroad companies 9,070,068.67 acres, and 2,779,772.68 acres for canal and drainage purposes. The State has disposed, for various internal improvement activities, all of this huge sum except a balance of 1,060,120.43 acres.

Some railroads profited from both the State aid and from Federal aid.

The following railroads, according to the Report of the Commissioner of Agriculture, 1925, had so profited:

NAME OF THE RAILROAD	FEDERAL AID	STATE AID, ACT 1850
Alabama and Florida. (From Pensacola to Alabama line)	166,691.08 acres	27,613.32 acres
Pensacola and Georgia. (From Lake City to Pensacola)	1,273,145.50 acres	65,561.77 acres
Florida, Atlantic and Gulf Central (From Jacksonville to Lake City)	29,103.74 acres	164,568.21 acres
Florida Railroad (From Fernandina to Cedar Key)	290,183.28 acres	*505,154.14 acres
	*Includes road from Waldo to Tampa	
Florida Central and Peninsular (From Waldo to Tampa)	460,329.90 acres	
Total approved direct by U. S.	2,219,453.50 acres	

FEDERAL AID IN THE CONSTRUCTION OF RAILROADS

During the first session of the thirty-fourth Congress seven acts were passed having for their purpose the giving of aid in the construction of railroads. Mr. Bennett, of New York, reported out for passage a Bill giving aid to the States of Florida and Alabama, which contemplated giving aid to four railroads, two in Alabama and two in Florida. The Bill passed the House May the 14th, passed the Senate the following day, and was approved May the 17th, 1856. It carried with it a grant to the two States as trustees a large acreage of the public domain of the United States. The Bill was entitled, "An Act granting public lands, in alternate sections, to the States of Florida and Alabama, to aid in the construction of certain railroads in said States."

EXTRACTS FROM THE ACT OF 1856

"That there is hereby granted to the State of Florida, for the purpose of aiding in the construction of railroads from St. John's River, at Jacksonville, to the waters of Escambia Bay, at or near Pensacola; and from Amelia Island, on the Atlantic, to the waters of Tampa Bay, with a branch to Cedar Key, on the Gulf of Mexico; and also a railroad from Pensacola to the State line of Alabama in the direction of Montgomery, every alternate section of land designated by odd numbers, for six sections in width on each side of said roads and branch. But in case it shall appear that the United States have, when the lines or routes of said roads and branch are definitely fixed, sold any sections, or any parts thereof, granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents to be appointed by the Governor of said State, to select, subject to the approval of the Secretary of Interior, from the lands of the United States nearest to the tiers of sections above specified, so much land in alternate sections or parts of sections, as shall be equal to such lands as the United States has sold, or otherwise appropriated, or to which the rights of pre-emption have attached aforesaid . . . . . shall be held by the State of Florida for the use and purposes

aforesaid: Provided, that the lands to be so located shall in no case be further than fifteen miles from the lines of said roads and branch, and selected for and on account of each of said roads and branch:

"Provided further, that the lands hereby granted for and on account of said roads and branch, severally, shall be exclusively applied in the construction of that road or branch for and on account of which such lands are hereby granted, and shall be disposed of only as the work progresses, and they shall be applied to no other purpose whatsoever." (Section 1, Act May 17, 1856.)

"That the sections and parts of sections of lands which, by grant, shall remain to the United States within six miles on each side of said roads or branch, shall not be sold for less than double the minimum price of the public land when sold." (Section 2, Act May 17, 1856.)

"That the lands here granted to said State shall be disposed of by said State only in manner following, that is to say: that a quantity of land, not exceeding one hundred and twenty sections for each of said roads or branch, and included within a continuous length of twenty miles of each of said roads or branch, may be sold; and when the Governor of said State shall certify to the Secretary of Interior that any of the twenty continuous miles of any or either of said roads or branch, is completed, then another quantity of land hereby granted, not to exceed one hundred and twenty sections for each of said roads or branch having twenty continuous miles completed as aforesaid, and included within a continuous length of twenty miles of each of such roads or branch, may be sold . . . . and if any or either of said roads or branch is not completed within ten years, no further sales shall be made, and the lands unsold shall revert to the United States." (Section 4, Act May 17, 1856.)

The Legislature of Florida, December 27, 1856, passed an Act to accept the Grant of May 17, 1856, and to carry into execution the trust conferred upon the State of Florida. Section 1 of said Act reads as follows:

"That the lands, rights and privileges granted and conferred upon the State of Florida by the Act of Congress, entitled "An Act Granting Public Lands in Alternate Sections to the States of Florida and Alabama to aid in the construction of certain railroads in said States," approved May 17, 1856, be and the same is hereby accepted upon the terms, conditions and restrictions in said Act of Congress. (Chapter 776, Acts of 1856.)

The State as trustee must determine what lands the companies receive in case of conflicting limits, and the grant to a State for railroad purposes, by the Act of May the 17, 1856, is in the nature of a float. In the case of McGregor vs. Western Railroad Company, April 9, 1890, Secretary Schurz gave his opinion for the Department of Interior as follows:

"When the route or line of a proposed land grant has been definitely fixed, and a map or location filed in the proper offices, and the limits of the grant have been laid down thereon, the grant, previously a float, has acquired precision, and attached to peculiar lands so as to vest a title thereto in the grantee; and the deflection of the line of construction from such located line will not have the effect to draw the grant from the original line and allow its adjustment by new limits along the constructed road." (Copp's Public Land Laws, Vol. 2, page 793.)

The Act, May the 17, 1856, requires no patent and where the Act requires no Patent the Certification is equivalent to Patent. (37 Land Decision, page 387.) The leading case on the question of the issuance of Patent is to be found (2 Land Decision, page 497) wherein the Secretary held:

"The tract in question was within the terms of the Act of 1856, and when it was selected and the selection approved and certified by the Commissioner of the General Land Office the title became perfect in the State." "The certification of lands fully separates them from the public domain and removes them from departmental control as though patent had issued. (23 Land Decision, page 310.)

THE REVERTER IN THE ACT OF 1856 HELD TO BE A CONDITION SUBSEQUENT WHICH REQUIRES A FORFEITURE

The case of Schulenberg vs. Harriman (21 Wallace 44, holds that the reverter in the Grant of 1856 is a condition subsequent requiring a forfeiture to be taken by the Government or a release by the State or its grantee.

"In that case the grant was made upon the condition that if the road be not completed within ten (10) years no further sale shall be made, and the lands unsold shall revert to the United States. The road had not been completed within the time required for its construction, which had not been extended, and Congress had passed no act, nor provided for any judicial proceedings, to enforce any forfeiture of the grant, for failure to construct the roads within the period prescribed. Upon this state of facts, it was held that the grant to the State of Wisconsin were grants **in praesenti**, which acquired precision as the route of the road became fixed by its location; and that the lands had not reverted to the United States, although the road was not constructed within the period prescribed, no action having been taken, either by legislation or judicial proceedings, to enforce a forfeiture of grant."

"The title to the lands granted in 1856 could revert to the United States only by a forfeiture declared for a breach of the condition named in the grant, or a release by the State or her grantee of the same to the Government." (Bell vs. Chicago, Rock Island and Pac. R. R. Co., Copp's Pub. Ld. Law, Vol. 2, page 780.) Secretary Chandler to Commissioner Williamson, Aug. 31, 1876; Railroad Land Co. vs. Courtright, 21 Wall., page 316.

THE GOVERNMENT DECLARES A FORFEITURE

Forfeiture of Railroad Grants — — — — — — — — — — — — — — —

"There is hereby forfeited to the United States and the United States hereby resumes the title thereto, all lands heretofore granted to any State or to any corporation to aid in the construction of a railroad opposite to and coterminous with the portion of any such railroad not now completed, and in operation, for the construction or benefit of which such lands were granted; and all such lands are declared to be a part of the public domain: Provided, That this Act shall not be construed as forfeiting the right of way or station grounds of any railroad company." (Act September 29, 1890. Barnes Federal Code, Sec. 4089.)

THE GOVERNMENT LIMITS TIME FOR BRINGING ACTION TO ANNUL OR CANCEL ERRONEOUS PATENTS

Time for suit to cancel erroneous patents — — — — — — — —

"Suits by the United States to vacate and annul any patent to lands heretofore erroneously issued under a railroad or wagon

road grant shall only be brought within five (5) years from the passage of this Act, and suits to vacate and annul patents hereafter issued shall only be brought within six (6) years after the date of the issuance of such patents, and the limitation of section eight of chapter five hundred and sixty-one of the Acts of the second session of the Fifty-first Congress and amendments thereto is extended accordingly as to the patents herein referred to. But no patent to any lands held by a bona fide purchaser shall be vacated or annulled, but the right and title of such purchaser is hereby confirmed: Provided, that no suit shall be brought or maintained, nor shall recovery be had for lands or the value thereof, that were certified or patented in lieu of other lands covered by a grant which were lost or relinquished by the grantee in consequence of the failure of the Government or its officers to withdraw the same from sale or entry." (Act March 2, 1896. Barnes Federal Code, Sec. 4085.)

SELECTION BY RAILROADS OF LANDS IN LIEU OF ENTRIES BY SETTLERS

"In the adjustment of all railroad land grants, whether made directly to any railroad company or to any State for railroad purposes, if any of the lands granted be found in the possession of actual settlers whose entry or filing has been allowed under the pre-emption or homestead laws of the United States subsequent to the time at which, by the decision of the land office, the right of said road was declared to have attached to such lands, the grantees, upon a proper relinquishment of the lands so entered or filed for, shall be entitled to select an equal quantity of other land in lieu thereof from any of the public lands not mineral and within the limits of the grant not otherwise appropriated at the date of selection, to which they shall receive title the same as though originally granted. And any such entries or filings thus relieved from conflict may be perfected into complete title as if such lands had not been granted: Provided, That nothing herein contained shall in any manner be so construed as to enlarge or extend any grant to any such railroad or to extend to lands reserved in any land grant made for railroad purposes; And provided further, That this Act shall not be construed so as in any manner to confirm or legalize any decision or ruling of the Interior Department under which lands have been certified to any railroad company when such lands have been entered by a pre-emption or homestead settler after the location of the line of road and prior to the notice to the local land office of the withdrawal of such lands from market. (Act of June 22, 1874, Barnes Federal Code, Section 4066.)

TITLES OF PURCHASERS AND TRANSFEREES OF RAILROAD COMPANIES CONFIRMED

"To remove all doubt as to the title of the purchasers and transferees and their assigns from the several railroad companies of the land granted by the United States to the State of Florida, to aid in the construction of certain railroads in this State, by an Act of Congress, approved May 17, 1856, the State of Florida has granted and confirmed to the purchasers and transferees from the several railroad companies which accepted the provisions of the Act entitled, "An Act to Provide for and Encourage a Liberal System of Internal Improvements in this State," approved January 6, 1855, and their assigns, the land and titles thereto which were

granted to the State of Florida by the United States to aid in the construction of certain railroads in this State by Act of Congress, approved May 17, 1856, which said lands were afterwards selected and located for the several railroad companies accepting the provisions of this Act as aforesaid, along the line of their respective roads, to the extent and in the proportion to which they severally became entitled under the said act to provide for and encourage a liberal system of Internal Improvements in this State, and the Act of Congress granting the same above referred to." (Gen. Stat. Fla., Chap. 637.) Act of March 8, 1879, Section 448, Blount, Cooper and Massey's Digest.

BENEFICIARIES IN FLORIDA UNDER THE GRANT OF 1856

Information from the Secretary of the Interior shows that the Florida Atlantic and Gulf Central Railroad Company is beneficiary of the grant from Jacksonville to Lake City. That the Pensacola and Georgia Railroad Company is the beneficiary of the portion of the Grant from Lake City to Pensacola. In 1881 the portion of this grant extending from the Apalachicola River to Pensacola was conferred by the State upon the Pensacola and Atlantic Railroad Company, now the Louisville and Nashville Railroad Company. The road and presumably the grant from Jacksonville to Apalachicola River passed to the Florida Railway and Navigation Company, operated by the Seaboard Air Line Railway Company. The Grantee of the State line of railroad from Amelia Island (Fernandina) on the Atlantic to the Waters of Tampa Bay, with a branch to Cedar Keys to the Gulf of Mexico was the Florida Railroad Company, which became the Atlantic Gulf & West India Transit Company, and the Atlantic Gulf and West India Transit Company, in 1883, became the Florida Transit Railroad Company, and was in the same year consolidated with Peninsular Railroad Company and the Tropical Florida Railroad Company under the name of Florida Transit and Peninsular Railroad Company. Finally by consolidations and mergers became the Seaboard Air Line Railroad Company.

The grantee of the line of railroad from Pensacola to the State line of Alabama, in the direction of Montgomery, was the Florida and Alabama Railroad Company of Florida, now operated by the Louisville & Nashville Railroad Company. The grantee of the State of Alabama for the line of road from Montgomery to the boundary line between Florida and Alabama in the direction of Pensacola, was the Alabama & Florida Railroad Company, present owner Mobile and Montgomery Railway Company.

CERTIFICATES OF THE COMPLETION OF RAILROADS

Under the requirements of the Government, it was necessary that the Governor of the State of Florida certify that the road, the beneficiary under the Act of May 17, 1856, had been completed and these certificates are placed here for the information that they afford.

Executive Office,
Tallahassee, Fla., July 11,, 1881.

Hon. Secretary of Interior,
Washington, D. C.

Sir:

I have the honor to certify that the railroad from Waldo to Ocala, in the State of Florida, being a part of the line of railroad from Amelia Island on the Atlantic to the waters of Tampa Bay, specified in the Act of Congress approved May the 17th, 1856, and entitled "An Act granting

public lands in alternate sections to the State of Florida and Alabama to aid in the construction of certain railroads in said States," has been completed and is in actual operation, and that said railroad from Waldo to Ocala is of a continuous length of forty-five 88/100 miles.

I have the honor to be

Very respectfully,

W. D. BLOXHAM,
Governor of Florida.

(SEAL)
Attest
Jno. L. Crawford,
Secretary of State.

Executive Office
Tallahassee, Florida

To the Honorable
Secretary of Interior
of the United States.

I have the honor to certify that twenty miles of railroad commencing at Wildwood in Sumter County, Florida, and running southwardly to Section Seven in Township Twenty two South of Range Twenty two East and also thirty nine miles of railroad, commencing at Withlacoochee Station in Hernando county, Florida, and extending southwardly to Plant City in Hillsborough County, Florida, the same being parts of the line of railroad designated in the Act of Congress, approved May 17, 1856, entitled "An Act granting public lands in alternate sections to the States of Florida and Alabama to aid in the construction of certain railroads in said states," to run from Amelia Island on the Atlantic to the Water of Tampa Bay with a branch to Cedar Keys in the Gulf of Mexico are completed and the same are controlled and operated by H. S. Duval as Receiver of the railroad of the Florida Railway and Navigation Company.

In testimony whereof I have hereto set my hand and caused the Great Seal of the State of Florida to be affixed. Done at the Capitol this the 28th day of June, A.D. 1887.

(SEAL)
By the Governor
Attest:
John G. Crawford,
Sec. State.

E. A. Perry,
Governor.

Executive Office
Tallahassee, Florida

To the Honorable Secretary
of Interior

I have the honor to certify that two miles and .5325 of a mile of railroad, commencing at a point on section seven in Township Twenty two South of Range Twenty two East in the State of Florida and extending southwardly to Withlacoochee Station, the same being a part of the line of railroad designated in the Act of Congress approved May 17th, 1856, entitled "An Act granting public lands in alternate sections to the States of Florida and Alabama to aid in the construction of certain railroads in said states," to run from Amelia Island on the Atlantic to the Waters of Tampa Bay with a branch to Cedar Keys on the Gulf of Mexico, according to the report of John Bradford, Acting State Engineer dated October the 10th, 1887, (a Copy of which is hereto attached) showing that the said mileage of said railroad above specified has not been included in any report heretofore

made and completed and that the same is controlled and operated by H. R. Duval as Receiver of the Railroad of the Florida Railway and Navigation Company.

In testimony whereof I have hereunto set my hand and have caused the great seal of the State of Florida to be affixed, this the 13th day of October, A.D. 1887.

(SEAL) E. A. Perry.

By the Governor

Attest:

John L. Crawford,

Secretary of State.

COPY OF ACTING STATE ENGINEER'S REPORT

Tallahassee, October 10, 1887.

To the Hon. the Board of

Trustees of the Internal Improvement Fund,

Gentlemen:

I have the honor to report that in addition to the thirty nine miles of railroad of the Florida Railway and Navigation Company between the Withlacoochee Station and Plant City reported on as inspected by me to your honorable board on the 3rd day of June, 1887, I went over that portion also of said company's line of railroad which is between the point in section 7, in Township 22 South of Range 22 East, which was reported on by me under the impression that the same had been certified by Capt. H. S. Duval. The distance between the last two points is 2.5325 miles which I now beg to report as having been examined by me and proved to be constructed in full compliance with the terms of the internal improvement Act of January 6, 1856, and the acts amendatory thereof. And I now certify that the entire length of the road of the said Florida Railway and Navigation Company lying between Waldo and Plant City as based upon the report of the inspection of H. S. Duval, the State Engineer who made a portion of said examination and of my own and on certificate of J. W. Bushnell, Esq. the chief Engineer of said company made to me and dated with these presents and herewith submitted as follows:

From Waldo to Ocala	45 miles	970 feet
From Ocala to Wildwood	25 miles	4966 feet
From Wildwood to Sec. 7 T. 22 S. R—22 E	20 miles	
From Sec. 7 to Withlacooche	2 miles	28 feet
From Withlacoochee to Plant City	39 miles	
Making a total miles	132.65	

Most respectfully,

Your obt servt

Jno Bradford,

Acting State Engineer.

October 10, 1887

I find that the distance between Waldo and Ocala as actually constructed is 45 miles and 970 feet instead of 40 miles as appears by the report

of my predecessor H. S. Duval and he evidently intended to report only upon two full sections of twenty miles each, south of Waldo between Waldo and Ocala.

Most Respt.,
Jno. Bradford,
Acting State Engineer.

Executive Office
Tallahassee, Florida

To the Honorable Secretary of Interior of the United States, Washington, D. C.

I have the honor to certify that twenty six miles five hundred and twenty feet of railroad, commencing at Ocala in Marion county State of Florida and running southwardly towards Tampa Bay, the same being a part of the line of railroad designated in the Act of Congress, approved May 17th, 1856, entitled "An Act granting public lands in alternate sections to the States of Florida and Alabama to aid in the construction of certain railroads in said States," to run from Amelia Island on the Atlantic to the Waters of Tampa Bay, with a branch to Cedar Key on the Gulf of Mexico, are completed, and that the said twenty six miles five hundred feet of railroad is owned and operated by the Tropical Florida Railroad Company.

In testimony whereof I have hereunto set my hand and caused the Great Seal of the State to be hereunto affixed at the Capitol at Tallahassee, this the 5th day of August A.D. 1882.

(SEAL)
Jno. L. Crawford,
Sec. State.

W. D. Bloxham,
Governor of Florida.

STATE OF FLORIDA

I, David S. Walker, Governor of the State of Florida do hereby certify that the Florida Railroad from the Town of Fernandina to Cedar Keys was completed in the year eighteen hundred sixty.

In testimony whereof, I have hereunto set my official signature and caused the impression of the Great Seal of said State to be made hereupon, at the Capitol in the City of Tallahassee, this the twenty fourth day of February, in the year one thousand eight hundred and sixty eight.

(SEAL)
Attest:
Benjamin T. Allen,
Secry. of State.

David S. Walker,
Governor of Florida.

DEPARTMENT OF THE INTERIOR
General Land Office
Washington

September 28, 1926.

I hereby certify that the annexed copies of certificates of Governors of Florida of the completion and equipping of portions of the lines of railroad authorized by the Act of May the 15th, 1856 (11 Stat., 15) are true

and literal exemplifications of the originals on file in this office.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

(SEAL) Thos. C. Havell,
Acting Assistant Commissioner of General Land Office.

For additional information for certificates of completion of railroads see appendix.

CHARTERS OF RAILROADS

By Act of the Legislature, January 8, 1853, the FLORIDA RAILROAD COMPANY was chartered to construct a railroad from some tributary on the Atlantic Ocean, within the limits of the State of Florida, through the Eastern and Southern part of the State to some point, bay, arm or tributary of the Gulf of Mexico. (Sections 1 and 2, page 993 of McClelland's Digest.)

December 14, 1855, the Charter of the said FLORIDA RAILROAD COMPANY was amended so as to authorize the company to construct a railroad from Amelia Island on the Atlantic, to the waters of Tampa Bay in South Florida, with an extension to Cedar Keys in East Florida. (Section 3, page 993, of McClelland's Digest.)

Act of January 1872 changed the name of the FLORIDA RAILROAD COMPANY to the ATLANTIC, GULF AND WEST INDIA TRANSIT COMPANY. The Act provides:

> "The corporate company owning the property formerly known as the FLORIDA RAILROAD COMPANY and which has heretofore been known as the FLORIDA RAILROAD COMPANY shall hereafter be known as The Atlantic, Gulf and West India Transit Company; and the rights, franchises and privileges, as well as the duties, responsibilities of said corporation, shall in all respects remain and continue the same as though no change had been made in their said name." (Section 26, page 1002 of McClelland's Digest.)

In 1883 the ATLANTIC, GULF AND WEST INDIA TRANSIT COMPANY became the FLORIDA TRANSIT RAILROAD COMPANY and was, in the same year, consolidated with the PENINSULAR RAILROAD COMPANY and the TROPICAL FLORIDA RAILROAD COMPANY under the name of FLORIDA TRANSIT AND PENINSULAR RAILROAD COMPANY.

The FLORIDA TRANSIT AND PENINSULAR RAILROAD COMPANY, by consolidation with a number of other railroads, became the FLORIDA RAILWAY AND NAVIGATION COMPANY, on January 19, 1885. By foreclosure of a mortgage in the United States Court, the FLORIDA RAILWAY AND NAVIGATION COMPANY ceased to exist. After this the FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY was incorporated and acquired the roads that had been embraced in the FLORIDA RAILWAY AND NAVIGATION COMPANY.

By agreement of merger and consolidation, the FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY became the SEABOARD AIR LINE RAILROAD COMPANY on June 27, 1903.

(For information as to charters of other railroads see appendix.)

We suggest the following form for Abstracters to use in abstracting Certificates of Clear Lists of railroad lands under Act approved May 17, 1856.

FORM NO. 6

CERTIFIED CLEAR LIST NO._____
DATED _____
APPROVED BY SECRETARY OF INTERIOR _____

UNITED STATES OF AMERICA
TO
STATE OF FLORIDA, TRUSTEE
(For the purpose of aiding in the construction of railroads in accordance with Act of Congress approved May 17, 1856.)

Parts of Section	Section	Township	Range	Acres

(Here insert the description of lands described and which are being abstracted.)

General Land Office,
Railroad Division _____
(Here give date)

(Abstract the Certificate of the Examiner.)

General Land Office,
Mineral Division _____
Date

(Abstract or give the Certificate of the Chief of this Division.)

General Land Office, Division of
Swamp Lands _____
Date

(Abstract Certificate of this Division.)

Department of the Interior,
General Land Office _____
Date

(Abstract Certificate of the Commissioner.)

Department of Interior, Washington, D. C.

_____
Date

(Write the words of the Secretary of Interior as they appear in the instrument.)

Note: These various certificates lead up to the final act of the Secretary of the Interior and his approval passes title at the time of his signature.—Author.

CHAPTER TEN

TITLE OUT OF THE STATE

The office of Register of Public Lands was created by an Act of the General Assembly, December 26, 1845, and the incumbent of the office was known as the **Register of Public Lands.** As such officer he was authorized to make selection of lands previously granted to the State by the Federal Government, or which might thereafter be granted. Furthermore, he was authorized and empowered to execute deeds and conveyances to various purchasers of lands, embracing school lands as well as other lands from the Federal Government under the various Acts of Congress.

By Act of the Legislature, approved January 6, 1855, a Board of Trustees, known as the Trustees of the Internal Improvement Fund, was created, the Board being composed of the Governor of the State, Comptroller of Public Accounts, State Treasurer, the Attorney General, and the Register of State Lands, and their successors in office. The title to all lands granted to the State under the Act, known as the "Internal Improvement Act" and the Swamp Land Act was vested irrevocably in the five Trustees and their successors in office. (Section 2, page 589, of McClelland's Digest.)

The office of Register of Public Lands was abolished in 1869 and the duties formerly exercised by that officer devolved upon the Surveryor General. (Act of 1869, Chapter 1727.) All acts done by the Surveyor General as the Successor of the Register of Public Lands and while acting in that capacity were validated. (Section 6, page 190, McClelland's Digest.)

The offices of Surveyor General and Commissioner of Immigration were consolidated by the Constitutional Amendment of 1871, and thereafter the officer exercising control over the Public Lands was known as **Commissioner of Lands and Immigration.** He exercised the duties with respect to Public Lands previously exercised by the Register of Public Lands and his successor, the Surveyor General. He remained the official in that respect for the State until 1889 when the office of Commissioner of Agriculture was created and established.

STATE BOARD OF EDUCATION CREATED

By an Act of the General Assembly, January 30, 1869, a Board of Education was created consisting of the Superintendent of Public Instruction, Secretary of State, and the Attorney General, and under the terms of said Act the Board was made a body corporate and was authorized to perform all corporate acts necessary to the management and handling of the land granted to the State for school purposes . . . The Act was amended in 1889 and the personnel of the Board was increased to five members.

From the creation of the Board of Education, in 1869, it made the conveyances of school lands. Prior to that time conveyances had been made by other authorized officers of the State.

The Act of the Legislature, approved May 22, 1901, prescribed the method and manner of conveyance of state lands for educational purposes. Section 1 of said Acts reads as follows:

> "The title to all lands granted to or held by the State for educational purposes shall be conveyed by deed executed by the members of the State Board of Education of Florida, with an impression of the seal of the Department of Agriculture of the State of Florida thereon, attested by the Commissioner of Agriculture and no other witnesses to the execution thereof shall be

required to entitle the same to record and to be received in evidence in all the courts of judicial proceedings"

Whatever may have been the mode of conveying school lands prior to the Act of May 22, 1901, by the Board of Education is not clear from the statute, but in any event it is of no great importance, for the Act of May 22, 1901, validated school land deeds previously executed by the Board of Education in the following language:

"All deeds conveying lands granted to or held by the State for educational purposes heretofore executed by the members of the State Board of Education of Florida are hereby confirmed and declared to be valid and binding as conveyances of title to such lands." (Section 2, Act May 22, 1901.)

The Act of February 20, 1879 provided the manner of executing certain conveyances, which not only had reference to the conveyances by the Trustees of the Internal Improvement Fund, but also the conveyances by the Board of Education.

"That all deeds, agreements or contracts made by the Trustees of the Internal Improvement Fund, or by the Board of Education, for the conveyance of any of the lands respectively under their charge and control, or any estate or interest in said land, shall be attested by the seal of the Florida State Land Office, and it shall be the duty of the Commissioner of Lands and Immigration, on request of said Trustees of said Board, to affix said seal to all such deed, agreements, and contracts and the impression of said seal upon any deed, agreement or contract purporting to have been made by the Trustees of the Internal Improvement Fund, or by members of the Board of Education, or by the Commissioner of Lands and Immigration, shall entitle the same to be recorded in the office appointed by law for the record of deeds in each and every county, and to be received in evidence in all the Courts of the State. (Section 17, page 190 of McClelland's Digest.)

The Act of May 2, 1889, provided for a different seal of office to that which had been used by the State. Under the recitals of that Act it is provided that:

"It shall be the duty of the Commissioner of Agriculture to keep a suitable seal of office with the following inscription upon it: DEPARTMENT OF AGRICULTURE OF THE STATE OF FLORIDA." An impression of this seal shall be made upon all deeds conveying lands sold by the State, by the Board of Education, and by the Board of Trustees of the Internal Improvement Fund of the State, and all such deeds signed by the officers making the same and impressed with said seal shall be operative and valid without witnesses to the execution thereof, and the impression of such seal shall entitle the same to record and to be received in evidence in all courts."

Page 46. The authority of making conveyances by the trustees of the Internal Improvement Fund as enacted by Senate Bill No. 321, which reads as follows: "Section 1. "That the trustees of the Internal Improvement Fund of the State of Florida are hereby authorized and empowered to lease for royalties or for other agreed compensation, or to sell and otherwise dispose of, to persons, firms or corporations, the right to drill wells for the discovery and/or the production of petroleum and/or natural gas in the bottoms, owned by the State of Florida in its soverign capacity, of the bays, lagoons, straits, sounds, gulf, streams and lakes within the State of Florida; provided that such leases or sales shall not confer upon the person, firm or corporation acquiring the same the right to enter upon any private property of another nor the right to drill any well or otherwise place permanent or stationary obstruction in such waters or upon such bottoms within one-quarter of a mile of the shore line of the lands of any up-land owner without first having the written consent of such up-land owner to do so. The leases and sales so made shall convey to the lessee or vendee the rights of ingress and egress to, from and over th bottoms leased or acquired, and to construct and maintain on and over such leased or acquired bottoms in such manner as not to obstruct transportation, such structures, tanks, docks, stations and other equipments as may be required for the proper development of such leases and the purposes for which the smae are made."

CHAPTER ELEVEN

CONVEYANCES BY INDIVIDUALS

Conveyances by individuals are either voluntary or involuntary. In the former case it is the voluntary act of the parties and in the latter by operation of law.

Conveyancing by Individuals is Formal:

One of the earliest records of conveyancing by individuals is to be found in the 23rd chapter of Genesis and was accomplished with much ceremony. There are three things definitely set out in the narrative as therein given and these are: (1) a definite sum being paid; (2) the parties are distinctly and definitely named; (3) the property conveyed is accurately and definitely described.

Deed of Conveyance Defined:

A deed of conveyance is that instrument of writing which shows by its recitals that the ownership of property has been transferred or some interest therein.

Requisites of Deed of Conveyance:

The requisites of deeds of conveyance may be named as:

(1) The grantor or grantors and the character in which they act.
(2) The Grantee or grantees and the character in which they act.
(3) The nature and kind of a deed, such as warranty or quitclaim deed.
(4) The date of execution.
(5) The date of delivery.
(6) The consideration or inducement.
(7) The date of filing for record.
(8) The operative words of grant, inheritance or limitation.
(9) The legal description of property conveyed.
(10) Special recitals in the deed.
(11) The habendum clause.
(12) Signature of party grantors.
(13) Attestation clause.
(14) Certificate of Acknowledgement.

The importance of each of these in the abstracting and examination of deeds is the subject matter to follow. Quoting Florida authorities wherever possible, but where the Supreme Court of the State has not passed on the point in question, the decisions of other State Courts are given.

THE GRANTORS AND THE CAPACITY IN WHICH THEY ACT

There can be no valid deed without grantors to give and grantees to receive, and any error or omission, however, trivial should be noted. The names of the grantors appear quite frequently throughout the instrument and any discrepancy, either in spelling or designation, should be noted carefully in the abstracting of the instrument. Marital relation of the grantors should be noted, and if not stated mention should be made of the same in order to leave no doubt in the Examiner's mind.

This brings up the necessity of a discussion of parties capable of conveying.

Deed from Husband to the Wife:

A conveyance from the husband to the wife under the Common Law was absolutely void (Fowler v Shearer, 7 Mass. 14.) The rigor of the

Common Law was likely based upon the conception that the husband and wife created a single entity.

Florida provides for Conveyance from Husband to Wife by Statute:

Florida as early as 1903 passed an Act authorizing such conveyances and validating former conveyances:

> "All deeds to real estate heretofore made by husband direct to his wife are hereby validated and made as effectual to convey the title to the wife as they would have been were the parties not so married . . . Provided this law shall not apply to any deed of conveyance the validity of which is at the time of the approval of the Act being contested in law." (R. G. S. F., Sec. 3797.)

Infant Defined:

In Florida both males and females under the age of twenty one years are minors. (Beekman v Beekman, 53 Fla. 858, 43 So. 923.)

Conveyance by Infants:

An infant's sale of his realty in Florida transmits the title and is voidable only. Its validity does not depend upon the ratification after the infant has attained his majority, but passes title at the time of the delivery, and to avoid it the infant by some act, clear and unmistakable in character must disaffirm its validity. (Putnal vs. Walker, 61 Fla. 720, 55 So. 844.) But an infant's silence for a period of less than seven years as fixed by the Statute of Limitation, after he reaches his majority, does not bar his right to disaffirm his deed made during infancy (Supra.) If the infant has the consideration or any part of it at the time he seeks to disaffirm it he must return the same; but where he has disposed of it or lost it, his right to disaffirm is in no wise impaired or dependent upon making good what he received (Supra.)

This legal impediment moved the Legislature to provide some relief in instances where infants had married and had assumed tentatively the control of their own property.

FEMALE INFANTS

As early as 1835 it was provided that any married woman owning real property might sell, convey or mortgage as she might do if she were not married, provided her husband joined in such sale, conveyance or mortgage. (Act Feb. 4, 1835.)

In November of 1828 a provision was made for relinquishment of dower by married women, either by joining with her husband or by separate deed executed like other conveyances. (Section 3802 R. G. S. F.)

The foregoing had no reference to the disability of none-age, so the Legislature later provided that:

> "A relinquishment of dower executed and acknowledged by a wife shall be valid notwithstanding her minority at the time of such execution and acknowledgment." (Sect. 3804, R. G. S. F.)

Later, in 1901, the Legislature passed an Act providing for the conveyance of a female minor's separate property. It provides that:

> "The execution of a deed by a married woman conveying real estate belonging to her, joined in said deed by her husband, and duly acknowledged, shall be valid notwithstanding her minority at the time of such execution and acknowledgment." (Ch. 4954, Acts of 1901; Section 3805, R. G. S. F.)

In 1923, the Legislature passed an Act to further remove the disabilities of female minors. The Act provides:

> "That the disabilities of non-age of all female minors who are married, who have been married, or who may hereafter become married, including those divorced or hereafter divorced, and those who are or who may hereafter become widows, are hereby removed, and that hereafter all such female minors are hereby authorized to

assume the management of their estate, to contract and to be contracted with, to sue and be sued, and to do and to perform any and all acts, matters and things that she could do if she were twenty-one years of age." (Act No. 168, Chapter 9286, Approved May 25, 1923.)

REMOVAL OF DISABILITIES OF MARRIED WOMEN FREE DEALER

The Legisuature as early as 1879 passed an Act looking to the removal of the disability of Coverture by a proceeding in the Chancery Court by filing a petition setting forth the necessary allegations. The matter is referred to a master, after notice given as required by law in some newspaper published in the county for four consecutive weeks, to take testimony touching her competency and qualification to take charge of and to manage her estate and to report to the Court his opinion. If acted upon favorably a decree is entered confirming the report of the Master and to grant license in accordance with the prayer of the petition, and thereupon she shall have published a copy of the order of the decree granted her in the manner prescribed for the petition. (See Sections 3218 to 3222 both inclusive of the R. G. S. F.)

This procedure, notwithstanding the time it has been on the Statute, seems not to have come into general use. Where it appears that a married woman as a "Free Dealer" has executed an instrument without the joinder of her husband, it is necessary to show the Court proceeding together with publication notices.

MALE MINORS

By Act of the Legislature, approved June 5, 1917, it is provided that:

"That the disability of non-age of all male minors, who are married, have been married, or who may hereafter become married, is hereby removed, and that hereafter all such persons are hereby authorized to assume the management of their estate, to contract or to be contracted with, to sue and to be sued, and to do and to perform any and all acts, matters and things that he could do if he were twenty-one years of age." (Ch. 7364, Acts June 5, 1917.)

"That the provisions of this chapter shall apply to all such persons who may have obtained a decree of divorce, or who may hereafter obtain a decree of divorce, or whose wife may have died before such person has reached majority." (Sect. 3962, 3963 R. G. S. F.)

REMOVAL OF DISABILITY OF MINORS

Under the provisions of the Act of the Legislature, Jan. 3, 1889, the judges of the several circuit courts, sitting in Chancery, are authorized to remove disability of non-age of all minors, male or female, over the age of eighteen years. The procedure is begun by petition, either by guardian or next friend, in which the name, age of minor, character, habits, education and mental capacity for business are set out. After hearing, if the Court is satisfied, he may make a decree removing the disability of non-age and authorizing such minor to assume control of his estate as if he were twenty-one years of age. The decree shall be recorded in the county where such minor resides and a certified copy shall be taken and received as sufficient evidence of the removal of disabilities of non-age. (Chapter 3885, Acts of 1889.) (Section 3214 to 3217 R. G. S. F.)

WHERE ONE OF THE PARTIES, HUSBAND OR WIFE IS INSANE

If the Husband is Insane:

By the Act of the Legislature, 1893 it is provided:

> "Any married woman owning real or personal property in her own right in this State, whose husband is insane, and is so adjudged by a Court of competent jurisdiction, and who has continued in such condition for one year, may, let, lease, rent, mortgage, sell and convey any part or all of said property and receive the consideration or proceeds for the same; and all such contracts, indentures and conveyances, with the usual covenants, shall be lawful and binding without the consent and signature or joinder of her husband." (Ch. 4150, Acts 1893.) (Sect. 3806 R. G. S. F.)

It will be seen that it may become necessary to show the Court proceedings in the matter of adjudging insanity, and that the same has existed more than one year. When writing the deed conveying or leasing the property one should make the necessary recitals, and this backed by the court orders and other papers relating thereto will make the necessary showing under the statute.

If the Wife is Insane:

The procedure in this case is somewhat different and more comprehensive. In this case it is necessary for the husband to make the showing to the judge of the Circuit Court for the county in which such married woman resides or owns lands. The petition shall set out the jurisdictional matters as to residence and "that his wife is insane, and that it is for the interest of himself and his wife to convey, mortgage or otherwise alienate any part or all of said real estate. Such judge shall thereupon inquire into the facts . . . and if after such examination he shall find such wife to be insane, and that it is necessary and proper for the pecuniary advantage of such wife, he shall appoint a special guardian to join with her husband for the purpose and with power to relinquish her dower and right of dower in and to her husband's real property in the county aforesaid."

Former adjudication of insanity may be produced and filed with said petition where the same is evidenced by a duly and regularly certified transcript of the proceedings of lunacy, and the order of adjudging such wife a lunatic, together with an affidavit from the keeper of the asylum or other place to which she may have been committed that she is still in the custody of such officers. (Section 3807 Florida Revised General Statutes.)

Such deeds executed under the provisions herein set out should show the full procedure upon which they are based. The statute provides that "the relinquishment of dower made in accordance with the provisions . . shall be complete and effective to bar and cut off all dower and right of dower in and to the real estate so conveyed." (Section 3811 R. G. S. of Florida.)

CONVEYANCES BY CORPORATIONS

Any corporation may convey lands by deeds sealed with its common seal and signed in its name by the President or Chief Executive officer of the Corporation. (Section 3799 R. G. S. F.)

The president's signature and the corporate seal render deeds prima facie valid. (Bank vs. Call, 5 Fla. 409.)

ACTS OF OFFICERS IN EXCESS OF CHARTER POWERS

It is apparent that a Corporation is not vested with the powers of a natural person and derives its powers from the provisions of its charter. (Davis v R. R. Co., 131 Mass, 259,) and acts done in excess of the powers conferred by its charter are void insofar as the power to divest of any right in or to property belonging to it. (Franco-Texan Land Co. vs. McCormick 85, Texas 416.) Every person attempting to contract with a corporation must take notice of its legal limits and the powers derived from its charter. (Elevator Co. v R. R. Co., 85 Tenn., 703.)

If a corporation is chartered for the purpose of dealing in real estate, no showing as to the authority for execution of the deed by its officers are necessary, but otherwise some showing should be given. A corporation may have special powers or can convey lands for a special purpose, and in that event a conveyance in excess of authority is void. (Franco Texas Land Co. v McCormick, 85, Texas, 416.)

The validation of conveyances by Corporations heretofore executed. under corporate seal by the Vice-President or the Chief Executive officer shall be valid and effectual as if signed in the name of such Corporation by its President. (Section 3800, R. G. S. F.)

EVIDENCE OF INCORPORATION

For abstracting Letters Patent, or other evidence of incorporation, the following Form is suggested:

FORM NO. 7

STATE OF FLORIDA	LETTERS PATENT
TO	DATED _____
_____	FILED _____
(Corporation)	BOOK_____, PAGE_____

Incorporators: (Here name some of the members.)
Capital Stock:
Term of Years:
Corporate Powers:

GRANTEES AND THE CAPACITY IN WHICH THEY ACT

A deed to a party by wrong baptismal or Christian name will vest title in the intended grantee. (Staak v Sigelkow, 12 Wis., 234.) Extrinsic evidence is admissible to show the identity. (Peabody vs. Gray, 10 Mass., 45.) The weight of authority is that if upon the review of the whole instrument the grantee is pointed out, the grant will not fail, even though the baptismal name be not given at all. (Newton vs. McKay, 29 Mich., 1; Scanlan v Wright, 13 Pick Mass., 523.) Deed to the "estate" of a person is void. (Simmons v Spratt, 20 Fla., 495.)

If two persons bear the same name, such as father and son, the designatory term should be used. The term Sr. or Jr. constitutes no part

of the name but as a term of designation. (Padgett v Lawrence, 10 Paige N. Y., 170.)

No person can take as grantee a present estate unless named therein as a party and the habendum clause can never introduce one who is a stranger to the premises as grantee. (Blair v Osborne 84 N. C., 417; Hornbeck vs. Westbrook, 9 John, 73.) But one can take by way of a remainder by being named in the habendum clause. The grantee of a quit claim deed is not an innocent purchaser. Fur vs. Griffin, 35 Fla., 217, 17 So. 66.)

Defects in the Names of the Parties:

One of the most common defects is where a party takes under a misnomer and later conveys by right name. In view of the fact that in this country names are undergoing change in spelling, variations should be noted, either by underscoring or by abstracter's note calling attention. In the State of Florida we have a special statutory method of changing a name by going into Chancery Court by proper petition, making the necessary allegations, and obtaining an Order of Court to that effect. In view of the fact that we have a considerable foreign population, and many of these names are unpronounceable to us, has necessitated this special procedure in anglicising the name. If the name has been changed by an order of Chancery Court, the proceedings should be shown as the link between the parties, thereby explaining the variation in the name.

In some jurisdictions it has been held that where the grantee accepts a deed of conveyance in which the name is not correctly stated, the grantee is deemed to have adopted the erroneous name for the purpose of acquiring and holding the title. (Blinn v Chessman, 49 Minn., 140.) It has also been held that if the grantee is in existence a conveyance to him by the wrong name passes title. (Wilson v White, 84 Cal., 239.) A deed made to a "person or his heirs" is good if the heirs can be identified, although the first taker is dead. (Neal v Nelson, 117 N. C., 293.)

THE NATURE AND KIND OF DEED

The two deeds most frequently referred to are the Warranty Deed and the Quit Claim Deed. It becomes difficult sometimes to ascertain the kind of deed, and it is necessary to read the entire deed in order to determine that point. The opinion of the abstracter can not be made up in any other way to serve as reliable information other that to consider the whole contents of the instrument.

A Warranty Deed:

A Warranty Deed is one that contains the covenants of Warranty, either expressed or implied. The covenants add nothing to the efficiency as a means of conveyance, and the weight of authority is to the effect that a Quit Claim Deed will as effectually pass the Covenants of Warranty running with the land as a Deed of Bargain and Sale in the absence of words of restriction. (Morgan v Clayton. 61 Ill., 35; Rowe v Becker, 30 Ind., 154; Pingee vs. Watkins, 15 Vt., 479.) A Warranty Deed will eo instanti pass an after acquired title. (Morlis v Athewson, 75 Fla., 589, 79 So 202.)

The Covenants of Warranty:

The Covenants of Warranty, under the Common Law, are six in number and may be named in the order in which they come usually in the deed: (1) Covenant of Seizin; (2) Covenant of the Right to Convey; (3) Covenant against Incumbrances; (4) Covenant for Quiet Enjoyment; (5) Covenant for Further Assurance; and, (6) Covenants of Warranty. Of these six, the first three are personal and the last three are said to run with the land.

Covenant of Seizin:

Covenant of seizin is where the grantor covenants with the grantee that he, the grantor, has the very estate, both in quantity and quality, which he professes to convey. (Kent's Commentary, Vol. 4, page 471.) An outstanding estate, one in adverse possession, material deficiency in acreage

and undisclosed easement would constitute a breach of the covenant. The covenant if broken at all is broken at the time of its creation. (Tone v Wilson, 91 Ill., 529.)

Covenant of the Right to Convey:

The covenant is said by some to be synonymous with the Covenant of Seizin. It may be observed, however, that a man may be seized in fee, he has the right to convey, but the converse is not true, for he may have the power to convey and not be seized in fee. The covenant, if broken, is broken at the time of conveyance. (Devore v Sunderland, 17 Ohio, 52.)

Covenant Against Incumbrances:

The word "incumbrance" embraces every right to and interest in the land granted, to the diminution of the value of the land, but consistent with the passing of the fee by the conveyance. (Bron v Coffin, 108 Mass., 175.) This Covenant is broken at the time of conveyance. It was held in the case of Flood v Graham, 64 Fla., 207, 54 So. 456, that a right of way for a period of years over the conveyed lands was broken at the time of delivery of the deed. But on the other hand a Covenant against incumbrances was held not to be broken by the existence of a visible and notorious easement on the land at the time of the grant. (Van Ness v Royal Phosphate Co., 60 Fla., 284, 53 So. 381.)

Covenant for Quiet Enjoyment:

Extends to the possession merely and not to the title of the land, and in order to establish a breach an eviction is necessary, either actual or constructive. The covenant is broken whenever there has been an involuntary loss of possession by reason of the hostile assertion of a paramount title.

Covenants of Further Assurance:

This is a covenant by which the grantor binds himself to make all further assurances of the lands to the grantee as his counsel shall lawfully and reasonably require. (Armstrong v Darby, 26 Mo., 517.) Such covenant would include such things as the removal of a judgment or other incumbrances. The right under this covenant must be asserted within a reasonable time. It is rarely inserted in American conveyances.

Covenant of Warranty:

This is a covenant by the grantor that on failure of title, either for the whole of the estate or part only, he will make compensation in money for the loss sustained thereby. (King v Kerr, 5 Ohio, 154) It differs from the covenant of quiet enjoyment which extends only to possession. Under the covenant of quiet enjoyment eviction is required to be only of lawful right, while under covenants of warranty the eviction must not only be of lawful right, but must be by paramount title. (King vs. Kerr, 5 Ohio, 154; Bissell vs. Kellog, 60 Barb., 629.)

The Revised General Statute, Sec. 3788, provides that a deed executed in the form therein provided shall effectually bind the grantor and his heirs as if the common law covenants were recited fully. The Supreme Court, in the case of Van Ness v Royal Phosphate Co., 60 Fla., 284, 53 So. 381, had this to say on the question of a statute in derogation of the Common Law:

> "A statute which is in derogation of the Common Law relating to the covenants in a deed will be strictly construed, and in case of statutory covenants the words of the statute must be strictly followed, or it will be insufficient."

The Abstracter can not, therefore, draw conclusions hastily as to the kind of a deed, but on the other hand give the necessary recitals and showings of record in order that the Title Examiner may determine for himself.

The Quit Claim Deed as a Means of Conveyance:

A Quit Claim deed will convey all the title the grantor has at the time of the execution. (Nidever v Ayers, 23 Pacific Reporter, 193.) But it can never inure to convey an after acquired title, which was not actually owned in equity at the time of the deed. (People vs. Miller, 44 N. W. Rep. 73.) It may be used to release claims of record against real estate. (Wood vs. Rusher, 44 N. W. Rep., 127.) It contains usually the operative words

"remise, release, convey and quitclaim," but it seems that the "operative words" in conveyancing can not be relied upon to determine the kind of deed as well as the significance, for the custom prevails of using all the words ever known to the Common Law as well as those of more recent invention. It was the custom of the old conveyancer to make use of many words, for if one failed, he hoped that one of the others might be more efficient. The custom once started has continued. In Florida, it has been held that the words of "transfer" and "assign", while not the usual operative words of a conveyance of real estate, passed title. (Sanders vs. Ransom, 37 Fla., 457, 20 So. 530.)

The Date of Execution of the Deed:

The date of the deed is no part of the substance of the deed, nor is it vitiated by the recital of a wrong date. (Moody vs. Hamilton 22 Fla., 298.) The conveyance takes effect from the delivery and not from the date of the instrument. (Loubat vs. Kipp, 9 Fla., 69.) The importance of the date becomes necessary in ascertaining priorities, or in ascertaining whether the statutory requirements were met at that time. Also, it may bcome necessary in showing when title initiated. (Breckenridge vs. Todd, 61 American Decision 83.) The date of the deed may be contradicted by explanation unless it be in connection with a stipulation in a grant, in which case it can not be varied by parol evidence. (Joseph vs. Biglow, 4 Cush. Mass., 82.) If the deed bears no date of execution, the date of acknowledgment may be presumed to be that of the date of execution (Gorman vs. Stanton, 5 Mo., Appeals, 585.) It has been held that where the date in the body of the deed was one year prior to the date at the foot thereof, the latter was held to be the true date of its execution. (Morrison vs. Caldwell, 5 Mon., 426.) A date in figures is of less importance than one in a different form. (Jackson vs. Schoonmaker, 2 Jon., 233.)

Date of the Delivery of the Deed:

A deed takes effect at the time of delivery, and not from the date of the instrument, though the date of the instrument is presumptively the true time of its execution and delivery. (Raines vs. Walker, 77 Va., 92.) A valid deed once delivered can not be defeated by any subsequent act, unless by virtue of a condition in the deed itself. (2 Washburn Real Property, page 577.) So where a grantee dies between the dates of the deed and its acknowledgment, it will be presumed that the deed had been delivered in his lifetime. (Eaton vs. Trowbridge, 38 Mich., 454.) Possession is prima facie evidence of delivery. (Campbell vs. Carruth, 32 Fla., 264, 13 So. 432.) And it has been held that a deed in possession of the grantee is presumed to have been delivered at the time of its date. (Billings vs. Stark, 15 Fla., 297.) If the grantee records the deed he will be estopped to deny its delivery. (Levy vs. Cox, 22 Fla., 546.) Delivery by the grantor and acceptance by the grantee are essential to convey title. (Parker vs. Safford, 48 Fla. 290.) The recording of a deed is equivalent to a formal delivery, in the absence of fraud. (International Kaolin Co. vs. Vause, 55 Fla., 641.)

DELIVERY IN ESCROW:

Delivery in escrow is where the deed is delivered to a third party to be held until the happening of some event or performance of some condition.

The title can therefore pass only on the happening of the event or the performance of the condition, except in certain cases where by fiction of law the instrument was allowed to take effect at the time of the first delivery. Thus in case where grantor died before the condition is performed the law from necessity will give effect to the first delivery, and make it the deed of the grantor at the time of the delivery in escrow. Hatch vs. Hatch, 9 Mass. 310.)

The condition or contingency upon which the deed is delivered in escrow may be expressed in writing, or rest in parol, or be partly in writing or parol.

To make out a delivery in escrow there must be certain definite elements. First, there must be a delivery to a third party to make an escrow. (Haworth vs. Norris, 28 Fla. 763, 10 So. 618.) Second, the condition of the delivery must be definitely stated at the time of the delivery, for instance a deed intrusted by grantor to be held subject to inspection does not constitute a delivery in escrow. (Loubat vs. Kipp, 9 Fla. 660.) The escrow holder is a trustee in effect for both parties, and as such is charged with performance of the agreement. (Ullendorff vs. Graham, 80 Fla. 845, 87 So. 50.) After the deposit of the instrument with the escrow holder it has passed beyond the control of the grantor and can not be withdrawn unless the grantee is in default in complying or meeting the condition. (Ullendorff vs. Graham (Supra.)

THE EFFECT OF THE CONSIDERATION AS EXPRESSED IN A DEED:

No consideration was required under the Common Law, but became necessary under the Statute of Uses. At present the only practical operation of the expression of a consideration in a deed is to prevent a resulting trust to the grantor and estop him from denying the making and effect of for the uses therein declared. (Meeker vs. Meeker, 16 Con. 383; Goodspeed vs. Fuller, 46 Me. 141; Graves vs. Graves, 29 N. H. 129.)

In general the consideration clause in a deed is not within the rule excluding parol evidence in contradiction of writing. The recital of a consideration, the grantor and his privies will be estopped to set up a want of consideration to avoid the effect of the conveyance of the legal title. (Campbell vs. Carruth, 32 Fla. 264. But where the deed recited a consideration of "one dollar and other valuable considerations," the true consideration may be shown by parol testimony. (Herrin vs. Abbe, 55 Fla. 769, 46 So. 183.) The general principle is that parol evidence is admissible to show that a different sum than that recited was paid, but not to show nothing was paid, or that the consideration was different **in kind** from that recited in the deed. (Mobile Savings Bank vs. McDonnell, 89 Ala. 434; 8 So. Rep. 137.) Love and affection is a sufficient consideration for a deed in Florida, but it will not vest an equity in a grantee so that he as grantee may reform the deed (Triesback vs. Tyler, 62 Fla. 580, 56 So. 497.) A deed granting title to two grantees, in the absence of a different showing, the presumption is that the consideration was paid equally as between the two grantees. (Nims vs. Nims, 23 Fla. 69.)

OPERATIVE WORDS OF GRANT AND LIMITATIONS

The effect of the operative words of grant is to be found in the interpretation of the laws of the various states, and the effect of the words is largely a matter of the decision for the courts of the State in which the land lies. It has been held in Florida that the words "transfer and assign" conveys title.

It may be said that any writing that sufficiently identifies the parties, describes the lands, acknowledges the sale of the vendor's rights for a valuable consideration, and is signed, sealed and delivered is a good deed of bargain and sale. (Chiles vs. Conley Heirs, 2 Dana (Ky.) 21) and if complete in other respects, has been held to constitute a valid conveyance even though the word of "grant" is omitted. (Bridge vs. Wellington, 1 Mass. 219.) This case has been repeatedly criticised.

AN ACT TO DISPENSE WITH WORDS OF LIMITATIONS IN CONVEYANCES AND GRANTS OF REAL ESTATE

Chap. 5145. Acts of 1903.

"Sec. 1. Where any real estate shall hereafter he conveyed or granted without there being used in the conveyance or grant any words of limitations, such as heirs or successors or similar words, such conveyance or grant shall be construed to pass the fee simple or other whole estate or interest which the grantor had power to dispose of in real estate conveyed or granted unless a contrary intention shall appear in the conveyance or grant." Approved June 3, 1903.

WORDS OF LIMITATION AND THE WORD "FEE SIMPLE" DISPENSED WITH

"Whenever any real estate has heretofore been conveyed, or granted, or shall hereafter be conveyed or granted without there being used in said deed or conveyance or grant any words of limitation, such as heirs or succession, or similar words, such conveyance or grant, whether heretofore made or hereafter made, shall be construed to vest the fee simple title or other whole estate or interest which the grantor had power to dispose of at that time in the real estate conveyed or granted, unless a contrary intention shall appear in the deed, conveyance or grant." (1903, C. 5145, Sect. 1; 2925, C. 10170, Sect. 1, Acts of 1925.

The Act of 1925 is prospective as well as retrospective.

DESCRIPTION OF THE LANDS

The description of the deed is to be carefully noted. The naming of the wrong section, township or range, giving of the wrong direction may be the cause of much labor and expense.

Many abstracters instead of writing the description refer to the lands in the caption of the abstract. This in the opinion of the author is a very slovenly habit and not to be tolerated.

Construction Relating to Description:

It is the work of the Abstracter to give the description as shown by the record, calling attention by undersoring or abstracter's remarks to discrepancies, and the part of the Title Examiner to interpret the description. Therefore a few of the general rules of interpretation are given for the benefit of Examiners.

(1) Instruments will be construed to render them valid and effective rather than void and ineffective. The presumption being that the party signing the deed intended to convey by a valid instrument. (Anderson vs. Baughman, 7 Mich. 69, 74 American Decision, 699.)

(2) Where one part of the description is false and impossible, but by rejecting that portion, a perfect description remains, such false and impossible part will be rejected and the deed held good. (Supra.)

(3) Where the word "west" was used instead of "east" referring to range, it may be rejected as surplusage, especially where the proper county is given to identify the land with a certainty. (Dupont vs. Davis, 30 Wis. 170.)

(4) Where the deed admits of two constructions, it will be construed according to the construction which makes strongly against the grantor. (Alton vs. Illinois Transit Co., 12 Ill. 38.)

(5) Construction should be equitable and not technical. (Johnson vs. Ballou, 28 Mich. 379)

(6) Deeds referring to plans, or where lines are laid down on a plan, and are referred to in a conveyance, the course and distances on such plan

are as much regarded as the true description of the land as if they were expressly recited. (Davis vs. Rainford, 17 Mass. 207.)

(7) Contents must yield to fixed boundaries. Where definite and permanent boundaries are given the deed must be considered to convey all the land within these boundaries, notwithstanding the quantity is much greater than that mentioned. (Gillman vs. Riopelle, 18 Mich. 145.)

(8) Line as a center of a highway. The inference of law is that the conveyance of the land adjacent to a highway, carries with it as a part of the grant, the fee to the center of the highway. If the highway is to be excluded it must appear in explicit terms in the grant. (Champlin vs. Pendleton, 13 Conn. 23.) Where bounded by a private way it extends to the side line of the private way. (Winslow vs. Reed, 69 Maine 67.)

(9) Where a deed conveys lots according to a recorded plat, the fact that the plat is invalid does not effect the deed. (Young vs. Cosgrove, 49 N. W. 1040.)

(10) The Government Plat according to the U. S. Survey becomes a part of the deed where it is especially referred to. (Miller vs. Topeka Land Co., 24 Pac. 420.) Where there is a variance in measurement between a recent survey and an early survey error is presumed to apply to the whole line and not to a particular portion. (Ibid.)

(11) The apportionment of excess or deficiency, such excess or deficiency must be allotted proportionately to each parcel. For instance in platting a block in which there is a number of lots, the excess or deficiency must be allotted proportionately to each lot. (Pereles vs. Magoon, 78 Wis. 27.)

(12) An exception in a deed, which does not give the boundaries but refers to a deed of conveyance which recites the boundaries of the exception is good. (McAfee vs. Arline, 83 Ga. 645, 10 S. E. 441.)

(13) Where a plat is referred to in describing property, such plat will be considered as giving description as if it was marked or written in the deed. (Slauson vs. Goodrich Transportation Co., 40 L. R. A. 825.)

(14) Where the description refers to the fractional part of a subdivision, it usually means the fractional part of the width thereof. It may mean that part of the area. The context of the whole description must be considered. In the case of Jones vs. Pashby, 62 Mich. 614, 29 N. W. 374, the court had under consideration the construction of the following description: "The east half of the east half of the northwest quarter and the east half of the east half of the southwest fractional quarter, all in Section 36, containing 50 acres of land, being the east half of 100 acres." HELD that the east half carried the east half of the area and not the east half of the width. Evidently the Court was largely influenced by the whole of the description, especially that part which read, "containing fifty acres, being the east half of the one hundred acres." (See also, Hartford Iron Mining Co. vs. Cambria Mining Co., 80 Mich. 491, 45 N. W. 351; Edninger vs. Woodke, 127 Mich. 41, 86 N. W. 397.) In Florida, we have many descriptions referring to the half of fractional subdivisions and for that reason this matter is given at length.

For lands to be conveyed the description must be sufficiently definite and certain to enable the lands to be identified; otherwise it will be void. A description to be absolutely void for uncertainty is one that can not be made certain by extrinsic or parol evidence.

Description by an Impossible Section number:

If premises are described by an impossible sectional number, it will be sufficient to put a purchaser from the same grantor on notice, and a party dealing with the grantor in such deed would have his attention arrested by the singular description, and would naturally be led to inquiry. The record affords him abundant data, which properly used and diligently inquired into, would inevitably lead to the fact of the existence of the deed. (Maerrick vs. Wallace, 19 Ill. 486.)

Description; city; judicial notice of it being in certain county:

Where the description identifies the lot, block, subdivision and city, the court will take notice that such city is in a certain county or State. The description was: "Those certain tracts or parcels of land situated in Haley's Addition to the City of Monmouth, known as Lot 5, Block 1 . . . in said City." (Harding vs. Strong, 42 Ill. 148.) The court had before it an ejectment proceeding.

Description, supplying omissions:

Omissions may be sometimes supplied so as to cure imperfect description, if the instrument contains, in other respects, sufficient facts to enable this to be done. Example: "The north half of the southwest quarter the south west quarter" of a certain section, the word "of" was supplied, when the call for quantity supported the construction. The Court said: "The general rule is, that effect should be given, if practicable, to every part of the description. The words 'the north half of the southwest quarter the southwest quarter of section 6' certainly constitutes a novel description. It would seem to be highly improbable that a grantor would under any circumstances, first grant the north half of the southwest quarter, and then, by word immediately following, grant the entire southwest quarter." (Burnett vs. McClucy, 78 Mo. 676.)

When the deed applied to the subject matter shows a manifest omission in the description, and there is sufficient data furnished by the deed to supply the omission, the omission will be supplied by construction. (Deal vs. Cooper, 94 Mo. 62. Also, see Wells vs. Heddenberg, 11 Tex. Civ. App. 3, 30 S. W. Rep. 702.) Description omitting, town, county or state where property is situated have been held sufficient where the deed provides other means of identification. (Black vs. Mfg. Co., 53 Fla. 1090, 43 So. 919; Gex vs. Dill, 86 Miss. 10.)

Erroneous number of Block Disregarded:

Where it appears from a whole description in a deed that a certain block was intended, a call for the block by an erroneous number was held to be properly rejected. In this case block 32 was construed to mean block 30. (Murray vs. Hobson, 10 Colo. 66, 13 Pac. 921.)

County omitted in the Description:

If a deed describes land as being situated in a section, township and range, the fact that the county is omitted, will not render the deed void for uncertainty where it appears that the description is applicable only to certain lands situated in the county in which as shown by the caption of the deed, it was executed. (Schener vs. Kelly, 121 Ala. 323, 26 So. 4.)

Quantity, when it shall control:

The call for quantity is less reliable and the one to which resort is last had. Still when no known and established boundaries are named as describing the lands, and the deed contains no other description sufficiently certain to define the land intended to be conveyed the quantity of land mentioned may be used for the purpose of ascertaining the granted premises. (Obrien vs. Clark, 104 Md. 30, 64 Atl 53.)

It sometimes happens that in abstracting lands in Government lots, there will be one or more lots numbered the same, but in different quarters of the section, and the conveyances themselves will fail to designate the quarter section. In that event the abstracter will have to resort to the "call for quantity" and make that the deciding feature as to omission of instruments. It is a safe rule, however, in that event to call attention to the omitted instruments and the reason for omissions. This will protect the abstracter, both from criticism of competitors, and from any liability for omissions,—should any arise.

Distinction between description in deed and mortgage:

In Connecticut the Court had before it for determination of the following description as to "notice." (After describing certain lands used the following language): "Also, all such other lands as we, the grantors, or either of us, own or have any interest in, situate in said town of Canaan;

reference being at all time had to the land records of said Canaan, and to the Probate records for the district of Sharon, for more particular description of the same."

Facts: There was another piece of land belonging to grantors which the mortgagee attempted to foreclose, and Mr. Justice Pardee in speaking for the majority of the Court said: "Whatever might be held with regard to the sufficiency of such description in an ordinary deed intended merely to convey title, yet we think such a description clearly insufficient in the case of a mortgage. It is a fixed policy of our law that mortgage deeds should give subsequent creditors for the mortagor definite information as to debts due the mortgagee, and as to the particular property pledged for its payment. It is only by knowing what the property is that they can learn its value . . . . To be told that the mortgage covers all the real estate which the grantor owns in the Town of Harford is to impose upon them the examination of many thousand pages of record. . . . . for the grantor himself may have received his title by the same general description and from many different grantors . . . It is not unreasonable to require of a mortgagee that his deed should mention a name, . . or point to a monument, or a particular deed, or refer to some book or page. It would be only his proper contribution to the upholding of a system which confers great benefits upon the public . . . We are of the opinion, therefore, that the general description in this mortgage was not sufficient to convey the interest of Mrs. Scott, the owner, to the mortgagees." (Herman vs. Deming, 44 Conn. 124; also Jackson vs. Delancy, 11 John 365.)

Mr. Devlin, in Devlin on Deeds, Vol. 2, Sections 654 and 655, makes the comment that there is no distinction between deeds and mortgages.

SPECIAL RECITALS IN DEEDS

Immediately following the description, if any, are usually found recitals, reservations and conditions. Sometimes they are found in different places in the deed, especially in a form deed. These should be fully set out, for the grantee and his successors are chargeable with notice of all matters occurring in his chain of title. (Pringle vs. Dunn, 37 Wis. 449.) Everything that restrains or qualifies, reserves or subtracts from the thing granted had better be given in full. The matter may require the skill and training of a technical examiner.

Exceptions and Reservations Distinguished:

The difference between an Exception and a Reservation may be determined by remembering that an "Exception" is something taken back out of the estate then existing and clearly granted. (Kiser vs. Reeser, 98 Pa. St. 1.) Thus an exception is always a part of the thing granted and of a thing in being. (Winthrop vs. Fairbanks, 41 Me. 307.) A reservation is a thing not in being, but is newly created out of the land or property conveyed. (Warvelle's Real Property, page 256.)

Conditions Precedent and Subsequent:

Also, there are conditions precedent and subsequent, and these require the most careful attention. A condition subsequent indicates something to be performed after the estate vests, while that of a condition precedent is something to be punctually performed before the estate vests. A further discussion of this highly technical subject is unnecessary here.

Restriction of the Use of Property:

These are of frequent occurrence. Every owner of property has the right to deal with it and to restrain its use by his grantee within such limits as to prevent its appropriation to purposes which will impair or diminish the pleasure or the enjoyment of the lands which he retains. It may be said that the only restriction to the foregoing statement is that due regard to public policy shall be kept in mind and without creating an unlawful restraint of trade. (Whitney vs. Railroad Co., 11 Gray (Mass.) 359.)

HABENDUM CLAUSE

The Habendum Clause has lost most of its importance in a conveyance and it is rare that the Examiner's attention is called to it. However, the abstracter should read it, and if there are any recitals out of the ordinary it should be recited. The statutory form in many states omit the habendum clause. It may sometimes enlarge or diminish the grant, especially where it clearly appears that it does. (Corbin vs. Healy, 20 Pick 514.) But it can never divest an estate created by the premises and any attempt to do so in the clause is void. (Kent's Commentaries, Vol. 4, page 468.) It can be used effectively to aid in the creation of vested remainders and trust estates.

SIGNATURE OF THE GRANTORS

The instrument or conveyance must be signed by the party transferring the title. This was not always true for the sealing and not the signature was the important thing in the old common law conveyances. The importance of the use of the seal doubtless arose by reason of so many people being unable to write. The Statute of 29 Charles, the second, for the prevention of fraud and perjuries required in making conveyances of lands that the same be put to writing and signed. In Blackstone's time the signing was not absolutely essential. It is the law in Florida as well as in other jurisdictions that an unsigned deed is a nullity. However, in some jurisdictions, there seems to be a trend to hold that a deed is not absolutely void for want of signature, provided it is written in the hand writing of the person whose name appears in the body of the deed. It then becomes a question of intent for the jury to determine in connection with other circumstances. (Saunders vs. Hackney, 10 Lea. (Tenn.) 194.) It sometimes happens that the grantor's name is omitted in the body of the deed and his connection with the instrument is only disclosed by his signature. There is a line of authorities holding that the one who signs, seals and delivers a deed is bound by such acts as a grantor, although his name is not included in the body of the deed. (Thompson vs. Lorein, 82 Pa. St. 432; Armstrong vs. Stovall, 26 Miss. 275.) Florida Court holds that it is not necessary for the husband's name to appear throughout the instrument conveying the wife's land; the signature being the only essential act. On the other hand there is a line of recent decisions indicating that the omission of the name of the grantor in the body of the deed is ineffectual to pass title, notwithstanding the signature, sealing and delivery. (Harrison vs. Simmons, 55 Ala. 510; Stone vs. Sledge, 87 Texas 49; Peabody vs. Hewett, 52 Me. 33; Kaughkin vs. Frean, 14 W. Virginia 322.) The latter rule is based upon the theory that the intention to convey is based or is to be gathered from the whole instrument.

If only a portion of the grantors named in the deed sign and acknowledge, what is the effect as to those who signed? There is in that event a disparity in the holdings of the courts. If the instrument shows that it was the intention to be jointly executed by all the parties, and execution and delivery is made by a portion only is incomplete and will not be binding upon the ones signing. Such is the holdings of the South Carolina Court in the case of Arthur vs. Anderson, (9 S. C. 234.) The weight of authority is to be found on the other side, and that is that it will be binding upon the ones executing and acknowledging and will convey their interests.

If there is a defect in the spelling of the name, or in the Christian name as it appears in the body of the deed and as it is signed, the same should be noted, for all variance of this kind would involve the doctrine of Notice. The question of signing by mark involves the question of the immediate presence of the ones executing the instrument. It has been

held by the Florida Court (Pierce vs. Dekle, 61 Fla. 390, 54 So. 389) that an act done in the presence of another and by his direction and consent is not regarded as the act of the agent but is the direct act of the person by whose direction the signing is done.

If an instrument has been executed by more than one person, and one seal only is affixed, in the absence of evidence to the contrary, it is presumed that the others adopted the seal of the grantor so signing.

ATTESTATION OF INSTRUMENT

The Act of November 15, 1828 (Thompson's Digest) provides that any conveyance touching the transfer of real estate shall be sealed and delivered in the presence of two witnesses by the party granting the same.

No particular words or form of attestation is necessary. Any words which clearly denote that such person so signing did so as witnesses are sufficient. (East Coast Lumber Co. vs. Ellis-Young Co., 55 Fla. 256, 45 So. 286.) In the case of Richbourg vs. Rose, 53 Fla. 173, 44 So. 69, it was held that the name of two persons signed at the place where witnesses usually sign and the word, "Wit" immediately written above the name was a sufficient attestation. A subscribing witness in the absence of statutory inhibition may sign by mark (Brunner vs. Hart, 59 Fla. 171, 51 So. 593.) In some jurisdictions it has been held that it is not necessary that the witness should have actually seen the party sign the deed; if he signs alone, and then calls witnesses, before whom he acknowledges the instrument is sufficient. (Jackson vs. Phillipps, 9 Cowen 113.) This view would permit a blind man to act as a witness. (Boone's Law of Real Property, Section 297.) A conveyance of land is binding between the parties even though it has not two subscribing witnesses. (Ward vs. German-American Lumber Co., 62 Fla. 582, 56 So. 565.) When attestation is required by statute it is usually a prerequisite to registration, and informality in that respect deprives the instrument of its legal effect as constructive notice. (Ross vs. Wothington, 11 Minn. 441.)

CHAPTER 12

ACKNOWLEDGMENTS

A Chart showing the various Acts of the State with reference to officers authorized to take acknowledgments in the State, without the State but within the United States, and in Foreign countries, together with recitals as to dower, separate examination from husband, and personal identification. Also, the various Validating Acts are shown.

Act	Officers authorized to take acknowledgments in State of Florida.	Officers without the State, but in United States.	Elsewhere than in the United States.	Requirements and recital of Certificate.
1828	Before some judicial officer or recording officer. Powers of Attorney in the county in which land is situated before recording officer.	No provisions except as to dower. Wife to acknowledge before Clerk or prothonotary of some court of record, in the presence of the Judge or Justice of the court to which the Clerk or Prothonotary belongs. The certificate is required to be autenticated. (Page 178, Thompson's Digest.)	Provision as to Dower only. Before a public minister, consul, agent or consul, vice consul, agent or vice agent. Certificate to be under hand and seal of his office.	Separate and apart from her husband, freely and voluntarily, without constraint, compulsion, apprehension or fear of or from her husband. (Page 178 of Thompson's Digest of the Laws of Florida.)
1831	Before Commissioner appointed by the Governor of the State of Fla.	Before Commissioner appointed by the Governor of the State of Florida to take acknowledgements in that State.	No reference made in the Act of 1831. Therefore no change in the officers authorized to take.	No change made as to requirements and recitals.
1834	Commissioner appointed by the Governor. Provision made for taking acknowledgement, if Commissioner not available.	Commissioners appointed by the Governor of State. In case of sickness or other circumstances where Commissioner is not available may be taken before certain court officials.	Before any Minister plenipotentiary, Minister Extra-ordinary, Charge D affairs, or Consul of U. S. (See page 182, Thompson's Digest for officers in different countries.)	Personal identification required by Act of 1834. (Page 181 of Thompson's Digest.)
1840	One of the Commisissions appointed under Act of 1831. In case Commissioner is not available, then before Chief Justice, Judge, Presiding Justice, or president. (McCelland's Digest, pages 216-217.)	Before one of the Commissioners appointed under the Law of 1831.	Same as Act of 1934.	Same as Law of 1834.
1873	Any judge, clerk Circuit Court, Notary Public, Justice of the Peace.	Before Judge, Clerk, Notary Public, Justice of the Peace, or other officer authorized, and according to the laws of that State where acknowledgment is made. (McClelland's Digest, page 218)	It may be executed according to the laws of that country before any Notary Public, Minister Plenipotentiary, or Extra-ordinary, Minister resident charge D affaires, commissioner or Consul of U. S.	In addition to the above recitals, two witnesses are required.

ACT OF 1875 VALIDATES ANY INSTRUMENT ACKNOWLEDGED IN ACCORDANCE WITH THE ACT OF 1873. ACT OF 1873 VALIDATED INSTRUMENTS THERETOFORE EXECUTED.

ACT OF 1901, SECTION 3825, VALIDATES INSTRUMENTS ACKNOWLEDGED BY OFFICERS OF CORPORATIONS,—SAME BEING MADE PRIOR TO APRIL 30, 1901.

(ACKNOWLEDGMENT, CONTINUED)

Act	Officers authorized to take acknowledgments, Florida.	Without the State, but in U. S.	Officers authorized to take acknowledgments elsewhere.	Requirements and recitals of Certificate.
1905	Same as old law, but adds United States Commissioners.	Before a Commissioner of deeds, judge, clerk, Notary Public, Justice Peace, Recorder of deeds, register and Master in Chancery.	Ambassador, envoy minister plenipotentiary, commissioner, consul, vice consul, charge D' affaires, Military officer, Commercial agent or vice commercial agent.	ACT VALIDATES ALL CONVEYANCES MADE BY MARRIED WOMEN, PRIOR TO JUNE 15, 1905. OMISSION OF CERTAIN WORDS OR DEFECTIVE AS TO FORM CURED. ACT 1903, REQUIRES NOTARY PUBLIC TO STATE EXPIRATION OF COMMISSION. (Chapter 5288, Sec. 1.)
1919	Same as old law.	Same as old law.	Strikes out commercial agent or vice commercial agent and adds: Ambassadors, Envoys Extra-ordinary, Minister Plenipotentiary, Commissioner, Consular Agent, any other diplomatic officer, military or naval officers authorized under articles of war.	Same as old law.
	VALIDATED ALL AFFIDAVITS AND ACKNOWLEDGMENTS THEREFORE MADE AND SET FORTH IN SAID ACT.			
1925	VALIDATING ALL INSTRUMENTS WHICH HAVE BEEN RECORDED FOR MORE THAN TEN YEARS AND HAVING ONE OR MORE SUBSEQUENT CONVEYANCES; PROVIDED, THERE BE NO SHOWING OF FRAUD, ADVERSE POSSESSION OR PENDING LITIGATION. (See Act of Legislature 1925, Chapter 10169.)			

Officers Who May Take Acknowledgments and Requirements as to Seal, In Florida.

The Act of February 24, 1873, Chap. 1939 (McClelland's Digest S. 16 page 218) provides: "Deeds executed in this State, of lands, or any interest in lands therein, shall be executed in the presence of two witnesses, who shall subscribe their names to the same as such, and the persons executing such deeds may acknowledge the execution thereof before (as follows)

"Any Judge, Clerk of the Circuit Court.
Notary Public,
Justice of the Peace."

The said Act of 1873 validates any deed or conveyance theretofore executed and acknowledged in compliance with the above provisions by Chap. 2069 Acts 1875 (QUERY: Not located in McClelland's Digest but appears in S. 3819 R. G. S.) Any deed or conveyance executed and acknowledged in accordance with the said Act of Feb. 24, 1873, is validated.

The Revised Statutes of 1892, S. 1973 provides as follows:

> "If such acknowledgment or proof be made within this State, it may be made before any judge, clerk, or deputy clerk of any court of record, notary public, or justice of the peace of this State, and the certificate of acknowledgment or proof shall be under the seal of the court or of the officer, as the case may be."

The Act of May 19, 1905, Chap. 5404 (G. S. 1906 in Fla. Comp. Laws, S. 2481) is the same as the old law except that it adds the following officer, viz: U. S. Commissioner.

Officers Who May Take Acknowledgments, etc.

The Act of June 9, 1919, Chap. 7849 (R. G. S., S. 3823) did not change the law as it appears above. The said Act of 1919 validated all affidavits and acknowledgments theretofore made or taken in the manner set forth above.

Outside of Florida but in United States.

The Act of Feb. 27, 1840 (McClelland's Digest, S. 12 p. 216-217 provides as follows:

> „All deeds, conveyances, powers of attorney and instruments under seal, hereafter acknowledged out of this State, but within the United States, or the territories thereof, and with intent to be used or recorded within the said State, shall be acknowledged or proved before * * * (as follows)

One of the commissioners appointed under the law of this State passed Jan. 24, 1831.

In those cities or counties wherein no commissioner is or shall be appointed under said law, or in case of sickness, death or inability to perform the duties of said office of such commissioner, where he may have been appointed, such acknowledgment and proof may be taken before the Chief Justice, Judge, Presiding Justice, or president of any Court of record of the United States, or of any State or territory thereof, having a seal and a clerk or prothonotary; but no proof, or acknowledgment taken by any such Chief Justice, Judge, presiding Justice, or president, shall entitle such deed, power of attorney, or conveyance to be recorded, unless taken within some place or district to which the jurisdiction of the court to which he belong shall extend, and the place of taking such acknowledgement be by him set forth in his certificate of acknowledgment, and also that the court of which he is Chief Justice, Judge, presiding Justice or president, is a court of record; and the certificate of acknowledgment of such Chief Justice, Judge, presiding Justice or president, be accompanied by the certificate of the clerk, or prothonotary of the court for which he

is such Judge, Justice, or president, under the seal of said court, that he is duly appointed or authorized as such Judge, Justice, or president.

By the Act of Feb. 24, 1873, Chap. 1939 (McClelland's Digest, S. 16, page 216) it is provided as follows:

"If any such deed or conveyance of land shall be executed in any other State, territory or district of the United States, such deed may be executed according to the laws of such State, territory or district, and the execution thereof may be acknowledged before * * * *" (as follows)

"Any Judge or Clerk of a court of record.
Notary Public,
Justice of the Peace
or other officer authorized by the laws of such State, territory, or district to take the acknowledgment of deeds therein,

Any commissioner appointed by the Governor of this State for such purpose."

The said Act of 1873 validated any deed or conveyance theretofore executed or acknowledged in accordance with the provisions of the said Act of Feb. 24, 1873.

The Revised Statutes of 1892, S. 1973, provides as follows:

"If the acknowledgment or proof be made out of this State, but within the United States, it may be made before a commissioner of deeds appointed by the governor of this State, or before a judge or clerk of any court of the United States or of any State, territory, or district, having a seal, or before a notary public or justice of the peace of such state, territory or district, having an official seal, and the certificate of acknowledgment or proof shall be under the seal of the court or officer as the case may be."

The Act of May 19, 1905, Chap. 5404 (G. S. 1906 and Florida Compiled Laws S. 2481) does not change the law as it is shown above.

The Act of June 9, 1919, Chap. 7849 (R. G. S. F. 3823) retained the old law as shown above except that it added the following officers, viz:

Master in Chancery,
Register or Recorder of Deeds.

The said Act of 1919 validated all affidavits and acknowledgments theretofore made or taken in the manner set forth above.

In Foreign Countries

The Act of Feb. 3, 1834 (McClelland's Digest, S. 13, page 217 provided as follows:

"If the party or parties executing such conveyance or other instrument as aforesaid, shall be or reside in any State or Kingdom in Europe, or in North or South America, the same may be acknowledged or proved before any minister plenepotentiary, or minister extra-ordinary, or any charge D'affaires, or consul of the United States, resident and accredited within any such State or Kingdom. If such parties be or reside in any part of Great Britain and Ireland, or the dominions thereunto belonging, the same may be acknowledged before the consul of the United States, resident or accredited therein, or before the Mayor or other Chief Magistrate of each of the cities of London, Bristol, Liverpool, Dublin, or Edinburg, such proof or acknowledgment being duly certified under the hand and seal of office of such consul, or the said Mayor or Chief Magistrate, respectively, or of such minister or charge D'affaires, shall have like force and effect as if the same were taken before an officer of this State, competent to take same." (Section 8, page 182 Thompson's Digest.)

Officers Who May Take Acknowledgments, etc.

The Act of November 15, 1828 (McClelland's Digest, S. 15, pages 217 and 218 provided as follows:

> "A deed of conveyance of real estate, if made in a place beyond the limits of the United States, where there shall be no public minister, consul or vice-consul, commercial agent or vice-commercial agent of the United States, to certify the act of the grantor of such deed, and the testimony of witnesses thereto, such act of the party may be made before two subscribing witnesses and a civil officer of such place, and the identity of such civil officer and credibility being certified by a consul, or vice-consul of the United States, of the government of which such place may be a part; a deed thus certified shall, if presented for record, be admitted to same as good and valid."

The Act of Feb. 24, 1873, Chap. 1939 (McClelland's Digest, S. 17, page 218) provided as follows:

> "If such deed be executed in any foreign country it may be executed according to the laws of such country; any execution thereof may be acknowledged before any Notary Public therein, or before any minister plenepotentiary, minister extra-ordinary, minister resident, charge d'affaires, commissioner, or consul of the United States appointed to reside therein, or before a commissioner appointed by the Governor of this State for such purpose, which acknowledgment shall be certified thereon by the officer taking the same under his hand, and his seal of office shall be affixed to such certificate."

The Act of Feb. 24, 1875, validated any deed or conveyance theretofore executed and acknowledged in compliance with the above provisions.

The Act of 1875, Chap. 2069 (appearing in R. G. S. F. 3819) validated any deed or conveyance theretofore executed or acknowledged in accordance with the provisions of the Act of Feb 24, 1873.

Section 1973 of R. S. provides as follows:

> "If the acknowledgment or proof be made in any foreign country, it may be made before any commissioner of deeds appointed by the governor of this State to reside in such country, or before any notary public of such foreign country, having an official seal, or before any minister, charge d'affaires, consul-general, consul, vice-consul, commercial agent or vice-commercial agent of the United States appointed to reside in such country, and the certificate of acknowledgment or proof shall be under the seal of the officer."

The Act of May 19, 1905, Chap. 5404 (G. S., 1906 and Fla., Compiled Laws, S. 2481) did not change the law as above set forth.

The Act of June 9, 1919, Chap. 7849 (R. G. S. F. 3823) changed the laws as above set forth by striking out "commercial agent or vice-commercial agent of the United States" and by adding the following officers, viz:

Ambassador,

Envoy extra-ordinary,

Minister plenepotentiary,

Commissioner,

Consular agent,

Any other diplomatic or consular officer of the United States.

Military or naval officer authorized by the laws or articles of war of the United States to perform the duties of notary public.

The said Act of 1919 validated all affidavits and acknowledgments theretofore made or taken in the manner set forth in said Act.

RECORDS TO BE KEPT BY THE CLERK

The Clerk of the Circuit Court is the recorder in the county, and for the purpose of recording the law requires that he keep the following records for that purpose:

(1) A R[illegible]

Page 67, under the head of "INSTRUMENTS TO BE RECORDED" the following Acts have authorized the recordation of the following instruments: "That certified copies of deeds, mortgages, powers of attorney and all other instruments of any kind which have been or may hereafter be duly recorded or filed among the public records of any county in this State, may be recorded or re-recorded among the public records of any other county or counties of this State as fully and in the same manner and with like effect as if such certified copy were the original instrument." (Section 1).

"That the record of such certified copies shall have the same effect as to notice and all other purposes whatsoever as the record of the original has or can have; and certified copies of the record of such certified copies shall be admissible and may be used in evidence in the same manner and with like effect and under the same conditions as certified copies of the record of the original instrument. (Section 2, page 38, General Acts of 1927).

The Legislature of 1927 by Senate Bill 224, page 99 of the General Laws provided as follows: "That from and after the passage of this Act no contract, agreement or other instrument purporting to contain an agreement to purchase or sell real estate shall be recorded in the public records of any county in the State of Florida, unless such contract, agreement or other instrument is acknowledged by the vendor or vendors, in the manner now provided by law for the acknowledgement of deeds; and where there is no acknowledgement on the part of the vendor or vendors, the Recording Officers in the various Counties of this State are directed to refuse to accept such instrument for record." (Section 1.)

"That no assignment of any contract, agreement or other instrument purporting to contain an agreement to purchase or sell real estate shall be recorded in any of the public records of this State, unless the contract, agreement or other instrument sought to be assigned shall have been recorded, or is entitled to be recorded under the provisions of this Act." (Section 2.)

"That no contract or agreement or other instrument purporting to contain an agreement to sell or purchase real estate, which has been executed by an agent or attorney in fact shall be recorded in any of the public records of this State unless the authority of such agent or attorney in fact to execute the instrument sought to be recorded is produced and recorded by the Recording Officer, or is already recorded in the County where such instrument is sought to be recorded; and for the purposes of this Act no authority for the execution of instruments by agent or attorney in fact shall be accepted which is not executed in the manner provided by law for the execution of Deeds." (Sec. 3.)

"This Act shall apply to all contracts and instruments heretofore and hereafter made, which have not been recorded at the time of the passage of this Act, but nothing herein contained shall enlarge, impair, alter, or diminish the obligation of any such contract or agreement affected hereby as between the parties privy thereto, or as to those who have actual notice thereof." (Section 4, Acts 1927, Approved June 6, 1927. Takes effect July 1, 1927.)

RECORDS TO BE KEPT BY THE CLERK

The Clerk of the Circuit Court is the recorder in the county, and for the purpose of recording the law requires that he keep the following records for that purpose:

(1) A Record of Deeds, in which he shall record all deeds, leases, powers of attorney and agreements relating to the conveyance of lands.

(2) A Record of Mortgages on real or personal property and powers of attorney, embracing powers to execute mortgages which may be entitled to record.

(3) A Record of Liens, in which he shall record all statutory liens required or permitted to be recorded.

(4) A Mortgage and Lien Assignment Book, in which shall be recorded all assignments of mortgages or statutory liens presented to him for record. No assignment shall be entered elsewhere than in such book, and any assignment shall, to entitle it to record, be in writing and duly acknowledged in manner provided for the acknowledgment of deeds. He shall enter a note of assignment upon the margin of the record of the mortgage or lien.

(5) A Mortgage Lien and Satisfaction Book, in which shall be recorded satisfaction of mortgages and liens. No such satisfaction shall be entered elsewhere than in such books, and any satisfaction to entitle it to record shall be in writing and duly acknowledged in the manner provided for the acknowledgment of deeds. No satisfaction by any alleged assignee of a mortgage or lien debt shall be entered until an assignment as hereinbefore provided shall have been presented to the clerk and entered. He shall enter a note of satisfaction on the margin of the record of the mortgage or lien.

(6) A Register, in which he shall, at the time of filing any instrument for record, enter the names of the parties to such instrument, with the number thereof, under the respective head of "Grantor" and "Grantee," the kind of instrument and the date and hour of filing.

(7) An Incorporation Record, in which he shall record all articles of incorporation required by law.

(8) Indexes, alphabetical, direct and inverse, to all of the foregoing books. (Section 3077 R. G. S. F.)

INSTRUMENTS TO BE RECORDED

Conveyances to be recorded.

No conveyance, transfer or mortgage of real property, or of any interest therein, nor any lease for a term of one year or longer, shall be good and effectual in law or equity against creditors or subsequent purchasers for a valuable consideration and without notice, unless the same be recorded according to law; nor shall any such instrument made or executed by virtue of any power of attorney be good or effectual in law or in equity against creditors or subsequent purchasers for a valuable consideration and without notice unless the power of attorney be recorded before the accruing of the right of such creditor or subsequent purchaser. (R. G. S. F. 3822.)

U. S. DEEDS AND PATENTS AND PHOTOGRAPHIC COPIES ADMITTED TO RECORD:

Deeds and Patents issued by the United States Government and photographic copies made by authority of said Government from its record thereof in the General Land Office, embracing lands within the State of Florida, shall be admitted to record in this State in the county or counties where the land lies when presented to the Clerk of the court of the county where the same is to be recorded, and said deeds, patents or photogrpahic copies shall appear to him to be genuine. (1921, C. 8565, 51.)

Upon recording said deed, patent or certified copy, the clerk of the court shall endorse thereon and also upon the record made by him the following: "This deed and patent (or certified copy as the case may be)

having been presented to me on the_____day of_____ for record, and the same appearing to be genuine and to have been made and issued by authority of U. S. Government I have duly recorded the same

in_____on pages_____of the public records of my office.

Witness my hand and seal at_____Florida, this the

_____day of_____19____.

_____Clerk."

Said deeds, patents, photographic copies and certified copies of the record thereof made in this State may be used in evidence in the courts of this State, subject to the same rules that are applicable to the admission of evidence of other deeds and certified copies of the record thereof. (1921, C. 8556, Sect. 3.)

Change of boundaries of counties, or creation of new counties:

When a deed is recorded in the county in which the land lies, the fact that the land is afterwards included in a newly made county does not require the deed to be recorded in the new county. (Whiddon vs. Lumber Co., 98 Ga. 700, 25 S. E. 770; Bivings vs. Gosnell, 133 N. C. 574, 45 S. E. 942.) However, if the land at the date of the deed lies in one county and before it is recorded a new county has been carved out of the old one which includes the land described in the deed, the conveyance must be recorded in the new county. (Garrison vs. Hayden, 19 Am. Dec. 170.)

THE FILING OF THE INSTRUMENT:

In the State of Florida, the filing of the instrument is identical to the recording of the same in contemplation of the law. As early as 1885 the Legislature passed an Act providing that:

> "All instruments relating to real or personal property which are authorized or required to be recorded shall be deemed to be recorded from the time the same are filed with the officer whose duty it is to record the same." (Act Feb. 16, 1885, Ch. 3592.)

The clerk shall be recorder of deeds in the county in which he is clerk, and the recorder of deeds and of all other papers not pertaining to Circuit Court which he may be required by law to record. Sect. 3077, June 1, 1917.

REGISTRATION OF INSTRUMENTS:

Recording is not a requisite to the validity of the instrument. (Stewart vs. Mathews, 19 Fla. 572; Licata vs. DeCorte, 50 Fla. 563, 39 So. 58.) An unregistered deed is void only as to subsequent bona fide purchasers and creditors without notice. (Black vs. Shinner Mfg. Co., 53 Fla. 1088, 43 So. 919.) A conveyance duly acknowledged and proved as required by law is entitled to record and is notice to all persons claiming through or under the grantor. (State vs. Trustees I. I. Fund, 20 Fla. 402.) But the mere recording is not notice unless the instrument is acknowledged and proved as required by law so as to entitle it to record. (Edwards vs. Thom, 25 Fla. 222, 5 So. 207.) The weight of authority is to the effect that the instrument must be recorded in a book provided for that purpose, but such is not the holdings of the Supreme Court of Florida. (Cawthon vs. Stearn Culver Lumber Co., 60 Fla. 313, 53 So. 378.) The Court, in the case just cited, in construing the statute which requires a deed of conveyance to be recorded in the book assigned by law for that purpose in order to be effectual against subsequent purchasers for value and without notice, held that a mortgage which had been recorded in a deed record effectual

as to constructive notice. Furthermore, the Court held that a mortgage recorded in a Miscellaneous Record book was constructive notice to subsequent mortgagees of the same real estate. (Ivey vs. Dawley, 50 Fla. 537, 39 So. 498.) It can be seen that the book in which the recording of the instrument is done has nothing to do with it. If filed, it is recorded under the Florida decisions, and the place where spread of record has no bearing on the question of notice.

It is a well established rule, recognized both at law and equity, that if a subsequent purchaser has actual or presumptive notice at the time of his purchase of any prior unregistered conveyance, he shall not be permitted to avail himself of his title against that conveyance. Creditors are also bound by notice of an unrecorded conveyance.

It has also been held by the Supreme Court of the State that the various statutes regulating the recording of instruments do not contemplate the recording of the inscription of public seals upon the records. (Summer vs. Mitchell, 29 Fla. 179, 10 So. 562; East Coast Lumber Co. vs. Ellis-Young Co., 55 Fla. 256, 45 So. 826.)

Purchaser under a quit claim deed by weight of authority is entitled to the benefit of the registration acts:

There is diversity of opinion as to whether a purchaser and holder under a recorded quit claim is entitled to the benefits of the registration acts as against a subsequent executed deed of bargain and sale unrecorded, and of which the holder of the quit claim had no notice. The old rule was to the effect that a purchaser under a quit claim deed was not a bona fide purchaser but the earlier decisions have been modified. Many facts are to be considered in connection with each individual case, such as the amount of the consideration and other important circumstances. . "The riper consideration has exploded the fallacy of the early decisions . . . . and have led courts to adopt the rule, which has now become firmly established, both upon reason and authority, that the innocent purchaser under a quit claim deed may acquire title under the registry statutes as against the holder of a prior unrecorded deed from the same grantor notwithstanding the fact that the latter had no title when he executed the second deed. (Boynton vs. Haggart, 120 Fed. 819.) In many states a holder under a quit claim deed is regarded as a bona fide purchaser. (Strong vs. Lynn, 38 Minn. 315; Rodgers vs. Burchard, 34 Tex. 441; Smith Heirs vs. Bank of Mobile, 21 Ala. 125; Nash vs. Bean, 74 Me. 340; Peters vs. Cartier, 80 Mich. 124; Johnson vs. Williams, 37 Kan. 179; Gress vs. Evans, 1 Dak. 387; McAdoo vs. Black, 6 Mont. 601; Baker vs. Woodward, 12 Or. 3; Leland vs. Isenbeck, 1 Idaho 469; Parker vs. Randolph, 5 S. D. 549.) In California, the court said: "We consider, therefore, that a quit claim deed received in good faith and for a valuable consideration, which is first recorded, will prevail over a deed of older execution which is subsequently recorded." Mississippi takes the same view. (Chapman vs. Sims, 53 Miss. 163.) The decided weight of authority is to the effect that a holder of a quit claim deed, bona fide, is entitled to the registration acts. (See Devlin, on Deeds, Vol. 2, Sections 670 et seq.) In Florida the grantee in a quitclaim deed, with respect to an unrecorded prior deed, is not a bona fide purchaser without notice within the meaning of the recording Acts. (Snow vs. Lake, 20 Fla. 656.)

THE DOCTRINE OF NOTICE

It is a well established principle in law that the purchaser of property must avail himself of every fact affecting the title to the lands purchased which a reasonable and prudent investigation would disclose. As a purchaser it is required of him to investigate, not only the records affecting the title to the lands to be purchased, but to make enquiries **in pais** as well as the records. (Littleton vs. Giddings, 47 Texas, 109.)

Notice is Generally Divided into Two Classes:

Notice is usually divided into two classes: Constructive Notice and Actual Notice.

It has been said that "Constructive Notice" is a legal inference from established facts. (Birdsall vs. Russell, 29 N. Y. 220.) While "Actual Notice" is that knowledge of facts which would suggest to a prudent man the probable defect in title and is sufficient to put a purchaser upon enquiry and therefore amounts to actual notice. (Cummings vs. Finnegan, 42 Minn. 524, 44 N. W. Rep. 796; Manasses vs. Dent, 89 Ala. 565, 8 So. Rep. 108.)

Of course the purchaser is not affected by vague rumors and hearsay statements, but he is bound to make inquiry when the facts come to him in such manner as to cause a reasonable person to investigate. (Bryan vs. Hodges, 107 N. C. 492.) It has been held that a quit claim deed is sufficient to put one on inquiry. (Goodard vs. Donaha, 42 Kansas 754, 22 Pac. Reporter, 108.) The possession of property is notice of whatever right the possessor may have. (Manufacturing Co. vs. Hendricks, 106 N. C. 485, 11 S. E. Rep. 568.)

The grantee in a quit claim deed in this State is not regarded as an innocent purchaser without notice. (Fries vs. Griffin, 35 Fla. 212, 17 So. 66.)

A purchaser certainly has constructive notice of whatever is contained in the deeds under which he claims, whether they be recorded or not, provided he has knowledge of such deeds. (Watson vs. Sutro, 86 Cal., 500, 24 Pac. Rep. 172; Wagner vs. Winter, 122 Ind. 57, 23 N. E. Rep. 754.) But the recitals in deeds or mortgages do not put one upon enquiry outside of his line of title. (McCrea vs. Newman, 46 N. J. Eq. 473.) A judgment which stands in the line of title is constructive notice of the facts and references of its recitals. (Boyd vs. McCullough, 137 Pa. St. 7; 9 L. R. A. 471.)

A subsequent purchaser is not chargeable with constructive notice of all instruments but only of such as lie in the apparent chain of title, or have been made by some one connected with the property involved in interest. (Carbine vs. Pringle, 90 Ill. 302.) The purchaser is not bound to look for a conveyance by or judgment against one in whom the record shows no title.

The imperfect recording of a perfect deed is not constructive notice. (Snow vs. Lake, 20 Fla. 656.)

LIS PENDENS:

Section 2853 (1649)) Florida Compiled Laws provides as follows: "No suit in law or equity shall operate as a lis pendens as to any property involved therein until there shall have been filed in the office of the Clerk of the Circuit Court of the county where the property is situated and shall have been recorded by him in a book to be kept by him for that purpose, a notice of the institution of the suit, containing the name of the court in which it is pending, a description of the property involved, and a statement of relief sought, as to such property."

"A writ of assistance will not be awarded against a stranger who innocently purchases property pending a foreclosure of which he has no actual knowledge and when the statutory lis pendens notice has not been filed. (Cole vs. Lee, 57 Fla., 387; 49 So. 101.)

"A failure to record a lis pendens in a foreclosure proceeding does not destroy the right to a writ of assistance as against one with actual knowledge of the suit who secretly acquired a voluntary conveyance of the property from the mortgagor and does not record the deed until after the final decree. (Ray vs. Hacker, 65 Fla. 265; 61 So. 500.)

"A purchaser pendente lite is bound by the judgment or decree rendered against the party from whom he makes the purchase as much as though he had been a party to the judgment or decree himself. (37 Fla. 190; 20 So. 255.)

Page 70, under heading of "Lis Pendens" House Bill No. 105 amends section 2853 of the Revised General Statutes of Florida as follows: Section 1. "That Section 2353 of the Revised General Statutes of Florida, relating to the operation and effect of Lis Pendens, be and the same is hereby amended so as to read as follows: 2853 (1649) Beginnings and requirements and dissolutions of No suit at Law or in equity shall operate as a Lis Pendens as to any property involved therein until there shall have been filed in the office of the Clerk of the Circuit Court of the county where the property is situated, and shall have been recorded in a book to be kept by him for that purpose, a notice of the institution of such suit, containing the names of the parties, the time of the institution of the suit, the name of the court in which it is pending, a description of the property involved and a statement of the relief sought as to such property. No notice of Lis Pendens shall extend or be effectual for any purpose beyond the period of one year from the institution of the suit unless the relief sought is disclosed by the initial pleading of the plaintiff or complainant to be founded upon an instrument of writing properly of record, or upon a material man's or mechanic's lien claimed against the property involved in such suit; unless the Judge of the Court in which said cause is pending shall upon reasonable notice and for good cause shown extend the time. And the said judge may impose such terms for the extension of said time as justice may require."

Section 2. "All causes in Chancery where the initial pleadings of the complainant does not show that the suit is founded upon an instrument of writing properly of record or upon a material man's or mechanic's lien, the court in which the cause is pending shall have the same power to control and discharge the notice of Lis Pendens as the said court has to grant and discharge injunctions." (General Laws, Session 1927, page 583.)

CHAPTER THIRTEEN

CURATIVE OR VALIDATING ACTS

Florida from time to time passed validating or curative acts having for their purpose the validation of defective acknowledgments, and this the State undoubtedly has authority to do, if there is no provision in her Constitution prohibiting such legislation. As a general principle the Legislature has power to pass, repeal or modify registration laws from time to time. Over the subject of registration the State would undoubtedly have control, and the exercise of that power could not be deemed an interference with vested rights. (Tatom vs. White, 95 N. C. 459.)

A curative act may apply to the acknowledgment of deeds involved in suits which are pending at the time of the passage of the act, as there can be no vested rights in a rule of evidence. (Reid vs. Hart, 45 Ark. 41; Johnson vs. Richardson, 44 Ark. 365; Haney vs. Garten, 51 Tex. Civ. App. 577, 113 S. W. Rep. 166.) If the statute provides that it shall not affect pending suits, it still may apply to a suit to quiet title and to restrain the prosecution of a suit in ejectment, although the ejectment suit was begun prior to the passage of the act. (Gratz vs. Land etc. Improvement Co., 40 L. R. A. 393, 82 Fed. 381, 53 U. S. App. 499.) The general rule is that curative acts validate conveyances which are actually recorded, but the acknowledgment of which are defective, and not those subsequent to the passage. (Jones vs. Berkshire, 83 American Decision 412.)

What are Defects within the Purview of the Statute:

In a case in which an acknowledgment had been taken by an officer not authorized by law to take acknowledgments, but where the defect had been cured by a Curative Act, the Court in commenting on the same said: "That the statute removed whatever defects there were in the acknowledgment, and that the deed was after such act, as good and valid to carry out the intent of the parties to it as though the acknowledgment had been "properly made." (Bryan vs. Bryan, 62 Ark. 79, 34 S.W. 260.) While such acts legalize defects in the certificate of acknowledgment it will not validate defects in deeds themselves, as for instance where the deed is unsigned (Greenwood vs. Jenswold, 69 Iowa 53, 28 N. W. 433.) Statutes of the character of curative acts relate only to the ceremony of the execution of the deed, and if the deed is not defective in execution or acknowledgment there is nothing for the curative act to operate upon. (Bowden vs. Bland, 53 Ark. 53, 13 S. W. 420.)

Effect of Curative Acts on Defective Acknowledgment of Tax Deeds:

If a statute makes acknowledgment an indispensable requisite of a tax deed, a material defect in the acknowledgment sufficient to invalidate it, is not remedied by a curative statute. (Goody Koontz vs. Olsen, 54 Iowa 174, 6 N. W. 263.)

Each curative act is to be construed in terms of its own provisions, and no rule can be laid down which will apply to all of them. It may be said, however, that they have for their purpose of curing some matter relating to the ceremony of taking the acknowledgment, and each act must be looked to carefully to see the scope of its meaning.

Curative acts are Retrospective in Nature:

Retrospective laws are not forbidden by the Constitution of the United States. (Calder vs. Hull, 3 Dall (U. S.) 386; Watson vs. Mercer, 8 Pet. (U. S.) 88.) The Supreme Court of U. S., in speaking of one of the statutes, said: "It is not a retrospective law which the Legislature is forbidden to pass. It is prospective declaring what should thereafter be received in courts as legal evidence of the authenticity of deeds. It makes no exception as to the rights of married women, and the courts make none. Informalities and errors in the acknowledgment of **femes covert**, are those which

careless or ignorant conveyancers were most liable to make and which required such curative legislation." (Webb vs. Dunn, 17 How. 576.)

Vested Rights not Disturbed by Curative Acts:

Curative Acts can not nor do they destroy vested rights of third persons. (McGehee vs. McKenzie, 43 Ark. 136.) A judgment rendered prior to such a statute is not affected by it. (Gaines vs. Catron, 1 Humph. (Tenn.) 514.) It is not the policy of such statutes to divest titles but to confirm them, and to thus prevent some grantee or assignee to take advantage of some defect, purely technical in nature (Gatewood vs. Hart, 58 Mo. 264.)

The General Scope of Curative Acts:

Validating or curative acts usually have for their purpose the curing of defective acknowledgments made by voluntary conveyances, and for that reason do not validate instruments defectively acknowledged by persons acting in a judicial capacity or in a ministerial legal capacity, such as Tax Deeds or Sheriff's Deeds.

Sheriff's Deed:

If by statute a sheriff's deed conveys no title unless properly acknowledged, a curative statute intended to cure acknowledgment of deeds in themselves good, will not apply to Sheriff's deeds. (Ryan vs. Carr, 46 Mo. 483.)

Use of Scrawl as Seal:

A scrawl or scroll, printed or written, affixed as a seal to any written instrument shall be as effectual as a seal. (Chapter 4148, Acts 1893, Sect. 1.)

VALIDATING USE OF SCRAWL OR SEAL:

All written instruments heretofore or hereafter made with a scrawl or scroll, printed or written, affixed as a seal are declared to be sealed instruments, and shall be construed and received in evidence as such in all the courts of this state. (Chapter 4148, Acts 1893, Sect. 2.)

VALIDATING ACT OF FEBRUARY 24, 1873

"Any deed or conveyance heretofore executed in compliance with the provisions of Sections 16, 17, and 18 shall have the same force and effect, and be as valid as if the same had been executed after the passage of this act." (Sect. 1939, Act Feb. 24, 1873. Section 19, page 219 of McClelland's Digest.)

Note: Sections 16, 17 and 18 above referred to have reference to acknowledgments made in the State, without the State and in foreign countries.

THE VALIDATING ACTS OF 1903

Sales of Executors, Administrators, Guardians and Commissioners Validated:

"Any sale of real estate heretofore made by any executor, administrator, guardian or commissioner, and any deed made by them respectively under an order of the circuit court or county judge, is hereby made as valid and effectual as if the law had authorized such sale and deed to be made under such order by the executor, administrator, guardian or commissioner conducting the same."

Limitation in Favor of Purchasers at Executor's Sale, etc.

"The title of any purchaser or his assigns who shall have held possession for five years of any real estate purchased for full

value at any sale, free from fraud, made by any executor, administrator or guardian, shall not be questioned by any heir, distributee or ward upon the ground of any irregularity in the proceedings or conveyances, if it appears that the proceeds of such sale have been applied bona fide to the object and purpose for which sale shall have been made; nor shall such title be questioned by anyone else who has received the money to which he was entitled, arising from said sale." (2938 R. G. S. F.)

Dean vs. Wilcoxon, 25 Fla. 980, 7 So. 163.

Roberts vs. Smith, 72 Fla. 537, 74 So. 299.

AN ACT to Cure Certain Informalities in the Execution of Deeds and Other Instruments Conveying or Transferring Real or Personal Property, or Relinquishing Dower Made by Married Women Prior to the 15th day of April, A. D. 1905.

"Section 1. All deeds of conveyance, bills of sale, mortgages, or other instruments of transfer of personal or real property, within the limits of the State, made and received bona fide and upon good consideration, free from fraud, executed by any married woman, whether for the purpose of conveying her separate estate or of renouncing or relinquishing her dower or right of dower, executed at any time prior to the 15th day of April, A. D. 1905, and which may be defective only in the particular that the separate acknowledgment to any such instrument requiring a separate acknowledgment by any such married woman there may have been omitted either or all of the words "Compulsion," "constraint," "apprehension," or "fear" shall be deemed and held to be as good and sufficient in law or equity to convey the right or interest of any such married woman attempted or intended to be conveyed under any such instrument as if the same had been made and executed according to the formalities now required for the execution of any such instrument, as against the maker, or makers thereof, and every person or persons claiming by, through or under such married woman, but this shall not affect the interest of any person not a party to the contract aforesaid.

Section 2. That this act shall take effect immediately upon passage and approval by the Governor." Act No. 41, 1905.)

Became a law without the approval of the Governor.

Conveyances of married women defective in acknowledgment validated:

"All deeds of conveyance, bills of sale, mortgages or other instruments of transfer of real or personal property within the limits of this State made and received bona fide and for a valuable consideration, when a consideration is essential or required by law, free from fraud, executed by any married woman, whether for the purpose of conveying her separate estate or of relinquishing her dower, or right of dower at any time prior to the 1st day of April, A. D. 1911, and which may be defective only in such married woman's acknowledgment, or in the officer's certificate of acknowledgment by an omission of either or all the words, "Freely, voluntarily, compulsion, constraint, apprehension or fear" shall be deemed and held good and sufficient in law or equity to convey the right or interest of any such married woman attempted or intended to be conveyed under any such instrument as if the same had been made and executed according to statutory requirements, as against the maker or makers thereof and every person or persons claiming by, through or under such married woman; "Provided, There appears in such acknowledgment either one or more of said word or words of similar import;" Provided, further, That nothing in this section shall affect any suit now pending in any of the courts of this State by reason of such defective acknowledgment, or any right or interest acquired in good faith by any party, not a party to such instrument." (Section 3818 R. G. S. F.; Act May 17, of 1911, Sct. 1.)

CERTAIN CONVEYANCES MADE VALID

"Whenever any power of attorney or deed of conveyance has by the person or persons owning the land therein described been executed and delivered to any grantee or grantees, and has been for a period of ten years or more before June 5, 1925, spread upon the deed records of the county wherein the land therein described has been or was at the time situated, and one or more subsequent conveyances of said land or parts thereof have been made, executed and recorded, by parties claiming under such instrument or instruments and such power of attorney or deed of conveyance or the public record thereof shows upon its face a clear and express purpose and intent of the person or persons executing the same to authorize the sale of said lands by any such power of attorney or to convey the said lands by any such deed, the same shall be taken and held by all the courts of this State, in the absence of any showing of fraud, adverse possession, or pending litigation to have authorized the conveyance of, or to have conveyed, the fee simple title, or any interest therein, of the person or persons signing such instruments to the lands therein described as effectively as if there had been no lack of any seal or seals, witness or witnesses, or defect in phraseology of the acknowledgment or the relinquishment of dower so long as it appears that the instrument shows in the body thereof a clear intent upon its face to authorize a conveyance, or to convey, a fee simple title and has been spread upon the public records of the county where the land lay at the time of the execution of such instrument and the recording thereof and no attempt made to set aside or cancel such instrument prior to June 5, 1925. And provided no instrument shall be validated or made admissible in evidence by this section, which instrument has heretofore had its admissibility in evidence passed upon adversely by any court of competent jurisdiction of the State notwithstanding the withdrawal or nonsuit of such action or suit.

A copy of any of the instruments referred to herein, duly certified, under the hand and seal of the office of the officer in whose office the same may be recorded, to be a true and correct copy of the original on file or of record in his office, shall in all cases and in all courts be admitted and received in evidence with the like effect and force as the original thereof might be.

Nothing in this section contained shall be taken or held to validate or to perfect any title to any lands as against one or more in adverse possession thereof or holding or claiming title under a different or adverse chain of title from either a common or different source." (1925, C. 10169, S. 1, 2, 3.)

WILLS AND DEEDS—VALIDATED

"After the lapse of twenty years from the record of any deed or the probate of any will purporting to convey lands, no person shall assert any claim to said lands as against the claimant under such deed or will, or their successors in title.

After the lapse of twenty years all such deeds or wills shall be deemed valid and effectual for conveying the lands therein described, as against all persons who have not asserted by competent record title any adverse claim.

Any person whose rights are adversely affected by this chapter will have six months within which to institute a suit to protect such rights and this chapter shall not affect pending litigation." (1925, Chapter 1071, Sct. 1, 2, 3.)

Act Limiting the time for heirs or Devisees to bring Suits for the Recovery of lands Conveyed:

The Legislature further attempted to strengthen the titles to land within the State by limiting the time to twenty years after recording within which persons as heirs of deceased persons or devisees might bring suits to recover.

Section 1. "When any person owning lands, or any interests in lands in Florida, has died or shall die intestate as to such lands, and a deed or deeds have been or shall be made by one or more of his or her heirs or devisees purporting to convey either singly or in the aggregate the entire interest of the deceased in such lands, or any part thereof, or the entire title thereto, then no person shall after twenty years from the date of the record of such deed or deeds, in the county where the lands lie, claim or recover the whole, or any part, of the real estate conveyed as heir at law, devisee, or otherwise, of or under such deceased person; provided, that suit may be brought by any such heir or devisee within four months from the date this Act becomes a law, and no pending suit shall be affected by this Act." (Approved June 8, 1925; Chapter 10168, No. 146 of Acts of 1925.)

Chapter on "Curative Acts in Handbook should be followed with the Act [illegible] in Chancery, etc. Senate

Page 75, should be followed with the following Act in the nature of a "curative act." Senate Bill No. 419 provides as follows: "That from and after the passage of this Act, all deeds of conveyance, bills of sale, mortgages or other transfers of real or personal property, within the limits of the State, made and received bona fide and upon good consideration by any corporation or to any corporation, and acknowledged for record or witnessed before some officer, stockholder or other person interested in the corporation, grantee or mortgagee, as a notary public of other officer authorized to take acknowledgements to instruments for records in this State, or if witnessed, whether stockholder or other person interested in the corporation be an officer or not, made, executed or so acknowledged or witnessed by or before such person so interested in said corporation, grantee, or mortgagee, at any time prior to the 15th day of April, 1927, shall be held, deemed and taken as valid and as if acknowledged by the proper notary public or other officer authorized to take acknowledgments to instruments for record in this State, not so interested in said corporation, grantee or mortgagee, or if witnessed as though the said witnesses were not interested in said corporation, grantee or mortgagee; and said instrument, whenever recorded, shall be deemed notice to all persons." (Sction 1, page 162 of the General Laws of 1927.)

Page 75 of the "Handbook on Florida Land Title" should also be followed with this Act, curative in nature. Senate Bill No. 421 reads as follows: "That whenever, in the acknowledgment of any deed or other instrument relating to real estate, heretofore recorded in this State, it shall appear, either from the recitals in such acknowledgment, or following the signature of the officer taking the same, or from the seal of such officer that the said acknowledgment was not taken, or may not have been taken, in the place as stated in the caption or venue thereof, said deed or other instrument shall, notwithstanding such irregularity or defect, be deemed and taken as properly acknowledged and of record." (General Laws, Session of 1927, page 163.)

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Chapter on "Curative Acts in Handbook should be followed with the Act which validates the recording of certain decrees in Chancery, etc. Senate Bill No. 725 reads as follows: "That it shall not be necessary to record or enter in the Minutes of the Court or Chancery Order Book any order or decree made in any cause in chancery appointing a general or special master or examiner, and any and all decrees heretofore or hereafter made where such orders have not been entered or recorded shall be valid and effectual for every purpose as if the same had been recorded. Approved May 28, 1927. (General Laws, Session 1927, page 232.)

CHAPTER FOURTEEN

DESCENT AND DISTRIBUTION OF REAL ESTATE

Section 3618 R. G. S. F., provides that whenever any person having title to real estate of inheritance shall die intestate as to such estate, it shall descend in parcenary to the male and female kindred, in the following course, that is to say:

To the children or their descendants and the husband, if the decedent is a married woman and the husband survive her.

If there be no children or their descendants, and the decedent be a married woman, and her husband survive her, all the property, real and personal, shall go to the husband; and if there be no children or their descendants, and the decedent be a married man and his wife survive him, all his property real and personal, shall go to the wife.

If there be no children and no husband or wife, then to the father and mother or the survivor in equal parts.

If there be no father and mother, then to the brothers and sisters, and their descendants, or such of them as may be.

If there be no brother nor sister, nor their descendants, the inheritance shall be divided into moieties, one of which shall go to the paternal and the other maternal kindred in the following course, viz.:

First to the grandfather.

If there be no grandfather, then to the grandmother, uncles and aunts on the same side or their descendants, or such of them as there may be.

If there be no grandmother, uncle or aunt, nor their descendants, then to the great grandfathers or great grandfather, if there be but one.

If there be no great grandfather, then to the great grandmothers, or great grandmother, if there be but one, and the brothers and sisters of the grandfathers and grandmothers, and their descendants, or such of them as there be.

And so in other cases without end, passing to the nearest lineal male ancestor, and for the want of them, to the lineal female ancestors, in the same degree and the descendants of such male and female ancestors, or to such of them as there may be.

INHERITANCE FROM INFANTS:

Whenever an infant shall die without issue, leaving no husband or wife surviving, having title to any real estate of inheritance, it shall descend in the following course, that is to say:

First, to the father of such infant, if the father survives.

Second, if there be no father surviving, then to the mother if the mother survives.

Third, if there be no father or mother surviving, then to the brothers and sisters or their descendants, if any surviving.

Fourth, if there be no father, mother, brothers, sisters or their descendants then the title to all of such real estate of inheritance shall descend according to the general rules of descent prescribed by the statute. If any such infant leave a husband or wife surviving, such husband or wife shall take all such infant's property. (Section 3619 R. G. S. F.)

DESCENT OF HOMESTEAD:

Whenever a person who is the head of a family residing in this State, and having his homestead therein, shall die and leave a widow surviving him, but no children, the homestead shall descend to the widow and shall not be the subject of devise by last will and testament; but if there be any child or children surviving him, the widow shall be entitled to dower or child's part in such homestead, as she may elect to take a child's part, in other cases and should she not elect to take a child's part she shall be

confined to dower in such homestead property; but she may take, under the will such other property as may be given to her thereby or dower therein as she may elect." (3620 R. G. S. F.)

INHERITANCE BY ADOPTED CHILDREN:

"Whenever a child has been adopted as an heir of another by and under the laws of any other state other than Florida, and such child shall afterwards become a citizen of this State, the same shall be considered the heir, and entitled to inherit according to the laws of Florida as if the adoption had been according to the laws of Florida." (Section 3624 R. G. S. F.)

Inheritance by Husband and Wife's Kindred.

"And where, for want of issue of the intestate, and of father, mother, brothers and sisters, and their descendants, the inheritance is before directed to go by moieties to the paternal and maternal kindred; if there should be no such kindred on the one part, the whole shall go to the other part, and if there be no kindred either on the one part or the other, and the wife or husband of the intestate be dead, the whole shall go to her or his kindred in the like course as if such wife or husband had survived the intestate and then died entitled to the estate." (S. 3621 R. G. S. F.)

Inheritance by Half-blood.

"In the cases before mentioned where the inheritance is directed to pass to the ascending and collateral kindred of the intestate, if part of such collaterals be of the whole blood to the intestate, and other part of the half blood only, those of the half blood shall inherit only half as much as those of the whole blood, but if all be of the half blood, they shall have whole portions, only giving to the ascendants (if there be any) double portion." (S. 3622 R. G. S. F.)

Inheritance per Capita and per Stirpes.

"And where the children of the intestate, or his mother, brothers or sisters, or his grandmother, uncles and aunts or any of his female lineal ancestors, living with the children of his deceased lineal ancestors, male and female, in the same degree, come into the partition, they shall take per capita, that is to say, by persons; and where a part of them being dead and a part living, the issue of those dead have right to partition, such issue shall take per stirpes or by stocks, that is to say, the shares of their deceased parents." (S. 3623 R. G. S. F.)

At page 76, "A Handbook on Florida Land Titles," section 3619 R. G. S. F. is repealed and the Act reads as follows: "That section 3619 (2296) relating to and entitled "Inheritance from Infants" be and the same is hereby repealed." (Section 1, page 3 of the General Laws, Regular Session, 1927).

and personal, descended; and such party bringing into hotchpot such advancement as aforesaid, shall thereupon be entitled to his or their proper portion of the whole estate so descended, both real and personal; and the value of the estate so advanced as aforesaid shall be estimated at the time of advancement and not at the death of the testator." (S. 3625 R. G. S. F.)

Dower in Lands Provided For.

"When any person shall die intestate, or shall make his last will and testament, and not therein make any express provision for his wife by giving and devising unto her such part or parcel of real and personal estate as shall be fully satisfactory to her, such widow may signify her dissent thereto in the circuit or county judge's court of the county wherein she resides at any time within one year after the probate of such will; and then in that case she will be entitled to dower in the following manner, to-wit: One-third part of all the lands, tenements and hereditaments of which her husband died seized and possessed, or had before conveyed

confined to dower in such homestead property; but she may take, under the will such other property as may be given to her thereby or dower therein as she may elect." (3620 R. G. S. F.)

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Hotchpot.

"When any of the children of the person dying intestate shall have received from such intestate, in his lifetime, any real or personal estate by way of advancement, and shall choose to come into the partition of the estate with the other parceners, such advancement, both of real and personal estate, shall be brought into hotchpot with the whole estate, real and personal, descended; and such party bringing into hotchpot such advancement as aforesaid, shall thereupon be entitled to his or their proper portion of the whole estate so descended, both real and personal; and the value of the estate so advanced as aforesaid shall be estimated at the time of advancement and not at the death of the testator." (S. 3625 R. G. S. F.)

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whereof she had not relinquished her right of dower as provided by law, which said third part shall be and enure to her proper use and behoof in and during the term of her natural life. In which said third part shall be comprehended the dwelling house in which her husband shall have been accustomed most generally to dwell next before his death, together with the offices, outhouses, buildings and other improvements thereunto belonging or appertaining. If, however, it should appear to the judge of the court to which application is made that the whole of the said dwelling house, outhouses, buildings and other improvements thereunto appertaining cannot be applied to the use of the widow without manifest injustice to the children or other heirs, then such widow shall be entitled to such part, not less than one-third part, as the court may deem reasonable and just." (S. 3629 R. G. S. F.)

The Widow's Election to Take Dower Instead of the Whole Estate.

"If a man die intestate in this State without children, being at the time of his death possessed of real and personal property, or either, the wife shall take the whole estate (as provided in Section 3618), or she may by an instrument in writing signed and acknowledged by her before any officer authorized to take acknowledgment of deeds for record and file and recorded in the office of the county judge, within one year after the death of her husband, elect to take dower instead of the whole estate." (S. 3631 R G. S. F.)

The Widow's Election as to Child's Part.

"1. Provision For.—In all cases in which the widow of a deceased person shall be entitled to dower, she may elect to take in lieu thereof a child's part.

2. Time Of.—Such election shall be made within twelve months after the probate of the will or granting letters of administration or she shall be confined to her dower.

3. Effect of the Election.—If a widow take dower she shall be entitled only to a life estate in the real property, to return at her death to the estate of her deceased husband for distribution; if she takes a child's part, she shall have in the property set apart to her a fee simple estate in the real property, and an absolute right to the personal property set apart to her, with power to control or dispose of the same by will, deed or otherwise." (S. 3632 R. G. S. F.)

Before Assignment of Dower.

"The widow may retain the full possession of the dwelling house in which her husband most usually dwelt next before his death, together with outhouses, offices or improvements thereto belonging, free from molestation or rent, until she shall have her dower assigned to her." (S. 3633 R. G. S. F.)

CHAPTER FIFTEEN

MORTGAGES

Section 3836 Revised General Statutes of Florida defines the instruments deemed mortgages in the following language:

> "All deeds of conveyance, obligations conditioned or defeasible, bills of sale or other instruments of writing conveying or selling property, either real or personal, for the purpose or with the intention of securing the payment of money, whether such instrument be from debtor to creditor or from the debtor to some third person in trust for the creditor shall be deemed and held mortgages."

The nature of a mortgage is also defined by legislative enactment Under the Act of January 8, 1853, it is provided that:

> "That a mortgage shall be held to be a specific lien on the property therein described, and not a conveyance of the legal title or the right of possession." (Section 3837 of R. G. S. F. See Evins vs. Gainesville National Bank, 80 Fla., 84, 85 So. 659.)

Execution in General: .It is not essential that the wife join in a mortgage conveyance to secure the payment of a balance of purchase money. (Taylor vs. Mathews, 53 Fla. 776, 44 So. 146.) Nor is the acknowledgment necessary to its validity. (Flowers vs. State, 59 Fla., 16, 52 So. 11.) Furthermore, a defective execution does not impair its value as between the parties. In the case Margarum vs. J. S. Christie Orange Co., 37 Fla., 165, it was held that the execution without witnesses did not impair its value. The requirement of witnesses to the execution is a creation of Statute—the same not being required under the common law, and in **Florida witnesses to a mortgage are not required, except in the case where a married woman has executed a mortgage to secure the debt of her husband.** There is no statute requiring witnesses to a mortgage before it is entitled to record. (Walker vs. Heege, 78 Fla., 667, 83 So. 605) A mortgage though unrecorded is binding as between the parties. (Snow vs. Lake, 20 Fla., 656.)

Recording or the Failure to record: An unrecorded mortgage or a defectively recorded mortgage is valid as against creditors and subsequent purchasers with notice.

Assignment of Mortgage and Mortgage Debt:

The indorsement of the note secured by a mortgage conveys the interest of the mortgagee. The note is the principal thing, the mortgage being accessory, so the indorsement of the note automatically carries with it the mortgage. (Evans vs. Gainesville National Bank, 85 So. 659.) And the assignee of such note and mortgage who acquired the interest in good faith and before the note is due is an innocent purchaser for value and will not

Page 79, "Foreclosure of Mortgages Etc." The Legislature, General Session, 1927, passed the following Act: "That the Circuit Courts of the State and the Judges thereof at chambers, shall have jurisdiction, power and authority to rescind, vacate, and set aside a decree of foreclosure of a mortgage of property at any time before the sale thereof has been actually made pursuant to the terms of such decree and to dismiss the foreclosure proceeding upon payment of all court costs." (Section 1.)

"That whenever a decree of foreclosure has been so rescinded, vacated and set aside and the foreclosure proceedings dismissed as provided in the preceding section, the mortgage together with its lien and the debt thereby secured shall be, both in law and equity, completely relieved of all effects of any kind whatsoever resulting from or on account of the foreclosure proceedings and the decree of foreclosure and fully restored in all respects to the original status of the same as it existed prior to the foreclosure proceedings, etc." (Section 2, page 76 of the General Acts of 1927.)

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Payment, Satisfaction and Release:

An unauthorized cancellation on the record of a mortgage does not destroy the lien. (Northup vs. Reese 68 Fla., 451, 67 So. 136.) The Act of 1901 provides for the cancellation of mortgages, liens and judgments upon the margin of the record, in the presence of the Custodian of the record, by the holder of such mortgage, lien or judgment, and for the attestation of such release by the Custodian of the Record. (Section 3843 R. G. S. F.)

Foreclosure of Mortgaged Lands in Different Counties:

When a mortgage includes lands . . . lying in two or more counties, it may be foreclosed in any one of said counties, and all proceedings shall be had in that county as if all the mortgaged land. . . lay therein, except that notice of sale must be published in every county wherein any of the

lands. . . to be sold lie. After final disposition of the suit, the clerk of the circuit court shall prepare and forward a certified copy of the decree of foreclosure and sale and of the decree of confirmation of sale to the clerk of the circuit court of every county wherein any of the mortgaged lands. . . lie, to be recorded in the Foreign Judgment Book of each of such counties and the costs of such copies and of the record thereof shall be taxed as costs in the cause. (Ch. 4420, Acts 1895, Sect. 1 as amended by Ch. 7339, May 14, 1917, Sect. 1.)

CANCELLATION OF MORTGAGES, LIENS AND JUDGMENTS:

Whenever the amount of money due on any mortgage, lien or judgment shall be fully paid to the person or party entitled to the payment thereof, the mortgage creditor, or assignee, or the attorney of record in the case of a judgment, to whom such payment shall have been made, shall enter on the margin of the record of such mortgage, notice of lien or judgment, in the presence of the custodian, satisfaction of said mortgage, notice of lien or judgment, sign the same with his or her hand; or shall execute in writing an instrument acknowledging satisfaction of said mortgage, lien or judgment, and have the same acknowledged and proven and duly entered of record." (Ch. 4918, Act 1901, Sec. 1, amending Ch. 4138, Acts 1893.)

Assignment of Mortgage to be effectual as against Creditors:

No assignment of mortgage upon real property or any interest therein, shall be good or effectual in law or equity against creditors or subsequent purchasers, for a valuable consideration, and without notice, unless the same be recorded according to law. (Ch. 6909, Act June 4, 1915, Sec. 1.)

Bar of Limitation or non-claim:

In case of the death of the mortgagor, the mortgagee under the Florida law is required to probate his claim, and if not done within two years the statute of non-claim will have run and the mortgage debt will be barred. (Bush vs. Adams, 22 Fla. 177.) But the payment of the interest upon a mortgage executed by a decedent raises a presumption of a presentation of the mortgage claim. (Miller vs. Crosby, 68 Fla., 365, 67 So. 76.) There may be acts which will defeat the statute of non-claim such as payment of interest and other acts which will estop the defense. (Fremd vs. Hogg, 68 Fla., 331, 67 So. 75.) Under Act of 1925, the time for presentation of a claim is one year.

Statute of limitation as applied to a chattel mortgage not under seal is five years. (Hope vs. Johnson, 28 Fla., 55, 9 So. 830.) The limitation of a mortgage debt is twenty years from the date when the right to file the bill accrued, it being within the period of limitation fixed by the statute on sealed instruments. (Jordan vs. Sayre, 24 Fla., 1, 3 So. 329.) The fact that the mortgage debt is barred by the statute does not bar the mortgage even as against the purchaser of the land from the mortgagor. (Ellis vs. Fairbanks, 38 Fla., 257, 21 So. 107.)

Foreclosure of a Mortgage:

A foreclosure of a mortgage is a chancery proceeding and the right to do so is brought about when the conditions upon which the mortgage is given are broken, or the debt secured thereby is due. In the foreclosure of a mortgage all junior incumbrancers and judgment creditors should be made parties to the suit in order that the foreclosure clear the title as it goes.

Parties to a foreclosure proceeding:

Prior to June 13, 1892, the heirs of an intestate mortgagor were not necessary parties to a suit of foreclosure, the proceeding being against the Administrator of the mortgagor. Such heirs are bound by a final decree. (McGregor vs. Jellum, 50 Fla., 581, 39 So. 697.)

Page 81, under the title of "Deficiency Judgments" the Legislature of 1927 amended the subject matter as follows: "That in all suits for the foreclosure of mortgages heretofore or hereafter executed the entry of a deficiency decree for any portion of the deficiency, should one exist, shall be within the sound judicial discretion of the Court but the Complainant shall also have the right to sue at common law to recover such deficiency." (Section 1, page 29 of the General Laws of 1927).

Page 81, under the head of "Deficiency Judgment," tre second pararaph thereof relates to Chapter 7839 of the Acts of the Legislature 1919. House Bill No. 46 repeals the same and reads as follows: "That Chapter 7839, Laws of Florida, adopted by the Legislature of Florida at its regular session, A. D. 1919, entitled, "An Act Relating to Suits in Chancery to foreclose mortgages or other liens and the parties to such suits" be and the same is hereby repealed. (Approved June 6, 1927; General Laws, Session of 1927, page 268.)

[illegible] shall be as endorser of the note or notes, guarantor of the debts, or otherwise may be made parties to such suit or proceeding to enforce such lien or foreclose the same." (1919, Ch. 7839, Sect. 1.)

"In all suits to foreclose such mortgages or enforce such liens of any mortgages or liens as mentioned in the preceding section, the court before whom such suit is pending shall enter a deficiency decree when the proceeds of the sale of the property subject to the mortgage or lien shall not be sufficient to pay the debt and costs, for any balance that may remain after the application of the proceeds of the sale of such property to said debt and costs, against the party or parties liable for the mortgage debt or lien debt, whether such liability is primary or secondary, and whether such liability is created by endorsement of the note or as joint maker of the note or guarantor, or otherwise of the obligations sought to be enforced. (1919 Ch. 7830, Sec. 2.)

Confirmation of Sale:

The confirmation of the sale of property under a mortgage foreclosure sale is equivalent to an adjudication that the sale was proper and a presumption is raised as to the regularity of the proceedings. (Mitchell vs. Mason, 75 Fla., 679, 79 So. 163.) The price bid at the mortgaged sale after confirmation becomes conclusive as to its value. (Etter vs. State Bank, 76 Fla., 203, 79 So. 724.)

Title acquired at a foreclosure relates back to the date of the mortgage. (Logan vs. Stief, 36 Fla., 473, 18 So. 762.) The doctrine of caveat emptor applies to the purchaser at a foreclosure sale. (Watson vs. Jones, 41 Fla., 241, 25 So. 678.)

The showing in the abstract should be: The mortgage, the Lis Pendens, if any, the service, the bill, the final decree, sale and confirmation and deed. The abstract should show these in an orderly manner.

Deficiency Judgment:

A deficiency decree may be defined as a decree for the balance of the indebtedness after applying the proceeds of the sale of the mortgaged property to such indebtedness. (Commercial Bank of Ocala vs. First National Bank, 80 Fla., 685, 87 So. 315.) A deficiency decree after foreclosure becomes a lien upon lands when filed and entered upon the minutes of the court. (Scott vs. Russ, 21 Fla., 260.) And if no deficiency judgment is taken in the foreclosure, an action at law for the amount of the deficiency may be maintained. (Webber vs. Blanc, 39 Fla., 224, 22 So. 655.) The right to a deficiency and the amount is to be gathered from all the papers in the case. (Realty Mortgage Co. vs. Moore, 80 Fla., 2, 85 So. 155.) A deficiency judgment can not be taken against a married woman. (Adams vs. Fry, 29 Fla., 318, 10 So. 559.)

The Legislature, in 1919, provided who are necessary parties in mortgage foreclosures and further provided the manner of taking deficiency judgments in such cases and these provisions are as follows:

"In suits to foreclose mortgages or other liens in any Courts of Chancery in this State, all persons having any interest in said mortgage or lien or the property mortgaged or upon which the lien exists or having assumed the obligation to pay the mortgage debt or lien debt, whether such obligation shall be as endorser of the note or notes, guarantor of the debts, or otherwise may be made parties to such suit or proceeding to enforce such lien or foreclose the same." (1919, Ch. 7839, Sect. 1.)

"In all suits to foreclose such mortgages or enforce such liens of any mortgages or liens as mentioned in the preceding section, the court before whom such suit is pending shall enter a deficiency decree when the proceeds of the sale of the property subject to the mortgage or lien shall not be sufficient to pay the debt and costs, for any balance that may remain after the application of the proceeds of the sale of such property to said debt and costs, against the party or parties liable for the mortgage debt or lien debt, whether such liability is primary or secondary, and whether such liability is created by endorsement of the note or as joint maker of the note or guarantor, or otherwise of the obligations sought to be enforced. (1919 Ch. 7830, Sec. 2.)

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The confirmation of the sale of property under a mortgage foreclosure sale is equivalent to an adjudication that the sale was proper and a presumption is raised as to the regularity of the proceedings. (Mitchell vs. Mason, 75 Fla., 679, 79 So. 163.) The price bid at the mortgaged sale after confirmation becomes conclusive as to its value. (Etter vs. State Bank, 76 Fla., 203, 79 So. 724.)

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The showing in the abstract should be: The mortgage, the Lis Pendens, if any, the service, the bill, the final decree, sale and confirmation and deed. The abstract should show these in an orderly manner.

CHAPTER SIXTEEN

PARTITION OF LANDS:

Suits for partition of real estate shall be by a bill in Chancery. Partiiton is the allotment to each joint owner of realty his share in severalty. At common law the owner of any joint estate, parcerners excepted, could compel his companions to make partition. (Washburn's Real Property, page 426.) The writ of partition was given by statutes of 31 Hen. 8, c 1 and 32 Hen. 8, c. 32, by means of which joint tenants were enabled to compel partition of their estate. (2 Blackstone's Com. 323.) This mode was finally abolished and the proceedings is a matter of statutory regulation.

By Act of the Legislature, approved March 14, 1844, it was provided:

> "Suits for partition of real estate shall in all cases be by bill in Chancery, and all proceedings, except when herein otherwise provided, shall be as in other cases in Chancery."

LOCALITY OF ACTION:

Suits for partition shall be brought in the county wherein the land lies, but if the lands to be partitioned are in more counties than one, suit may be brought in any one of the counties but the decree shall be recorded in every county in which any part of the land lies. (Ibid.)

WHO MAY HAVE PARTITION:

Generally speaking to obtain partition in equity it is necessary for the legal title to be clear and undisputed. The proceeding is one **in rem.** Tenants in common are entitled to partition, however inconvenient or injurious it may be. (Hawkins vs. McDougal, 125 Ind., 597, 25 N. E. Rep., 807.) If partition can not be made a decree of sale may be ordered and a partition made of the proceeds. The court and not the commissioner must ascertain and adjudicate the interests of parties. (Street vs. Benner, 20 Fla., 700.) The matter of adjudicating the legal title may be cared for in a suit of partition. (Ibid.)

But a cross bill in foreclosure cannot be sustained. (Mathew vs. Lindsay, 20 Fla., 962.) As a general proposition partition lies only in favor of one entitled to seizin or who has seizin of the premises. Therefore partition can not be maintained by a reversioner or remainderman. (Savage vs. Savage, 23 Pac. Rep., 890.) The heirs of a deceased person are not entitled to partition while the lien of the administrator for the payment of the intestate's debt remains upon the lands. (Hubbard vs. Ricart, 3 Vt., 207.) It is well settled by weight of American authority that a parol partition of lands is not within the statute of frauds. (McKnight vs. Bell, 135 Pa. St. 358.)

PARTIES DEFENDANT IN PARTITION:

All persons interested in the real property sought to be divided should be made parties to the proceedings either as plaintiffs or defendants; otherwise such party will not be bound by the judgment or decree. (Herman vs. Kelly, 14 Ohio, 502.) Persons who hold encumbrances upon the separate undivided shares need not be made a party. (Townshend vs Townshend, 1 Abb N. C., 81.)

FORM AND CONTENTS OF THE BILL:

The Bill filed must make the necessary allegations of the several interests, the names and places of residence of the several parties claiming interest, an accurate description of the lands to be partitioned, and any other matter necessary for the Court to determine the equities as between the parties. If there are minors it is well to make them parties defendant so as to make the proceeding an adversary one. It will be necessary for a Guardian Ad Litem to be appointed to represent such minors, and the

service on the infant defendants must precede the appointment. (Brock vs. Doyle, 18 Fla., 172.)

DECREE OF PARTITION:

The Decree should set forth the interest of each party according to the findings of the Court, the respective rights, shares and interests of all parties. If other matters have been adjudicated, the matters should be set out clearly, for it is to be remembered that title is being built up as the matter proceeds.

It should name three commissioners to make partition in kind, and describe accurately the lands to be partitioned. A decree of partition bad in part is bad as to the whole. (Sorwithe vs. Griffing, 21 Barb. 9.)

REPORT OF THE COMMISSIONERS:

The report of the Commissioners, giving the respective shares to each of the parties, if not excepted to, upon confirmation by the court amounts to the transfer of the respective interests. Any party to the suit has ten days to file his exceptions, after notice being given of the filing of the report, and in the event any party or parties is absent from the State so that notice can not be served, such party or parties has thirty days to file exceptions.

SALE OF NON-DIVISIBLE ESTATE:

If the Commissioners shall report that the real estate is incapable of being partitioned in kind, the Court may thereupon, upon application of any party and notice to the others, order the lands sold at public auction to the highest bidder by and under the direction of the Commissioners or other agent of the Court, and the moneys arising from the sale be divided according to their several shares. For good cause the sale may be made upon reasonable credit, but in all cases at least one-third of the purchase money must be paid down unless all parties to the cause consent to a credit sale. In case of a credit sale bond together with mortgage shall be given to secure the purchase money.

CONFIRMATION. Such sale after being reported to the Court and the money arising from the same paid into Court, the sale may be approved and a conveyance ordered. Then a conveyance may be made by the Commissioners.

WARRANTIES IN A PARTITION MATTER:

Where partition has been made, each partitioner becomes the warrantor of the other to the extent of the portion allotted to him, whether there be an express warranty in the deed or not. (Waller vs Hall, 15 Ohio, 362.) It therefore follows that no party to a partition suit can be permitted to assert an adverse title for the purpose of ousting another party from the portion allotted to him. (Venable vs. Beauchamp, 3 Dana 321.) A tenant in common is not permitted to purchase a superior outstanding title for his exclusive use and benefit, such a purchase is considered in equity as inuring to the benefit of all co-tenants, though the purchaser is entitled to contribution. (Bracken vs. Cooper, 80 Ill., 221.)

WHAT THE ABSTRACT SHOULD SHOW:

(1) The Petition in order that the respective interest may be shown together with the verification; (2) the service on defendants, and in case of minors, the appointment of the Guardian Ad-Litem to represent them; (3) The Decree Pro-Confesso, if any; (4) The Final Decree, naming the Commissioners and the Court's direction; (5) the Report of the Commissioners; (6) the Exception to the Report, if any and the findings of the Court; (7) the confirmation.

CHAPTER SEVENTEEN

POWERS OF ATTORNEY

In abstracting conveyances made by delegated authority the abstract should show fully the recitals of authority as given in the deed or conveyance. It is thought by some as the better policy in abstracting a conveyance made by delegated authority to get the party grantors, not from the premises but from the signature.

In the deed or conveyance the recitals must show that they are the acts and deed of the principal by the Power of Attorney; in the acknowledgment the recitals are to the effect that the delegated agent acknowledges and not the principal. In one place it is the act of the principal by an agent, in the acknowledgment the act of the agent as and for his principal.

It is well established by the weight of American authority that the execution of the conveyance made by an attorney must be in the name of the principal and purport to be executed by the principal. (Elwell vs. Shaw, 16 Mass., 42; Hale vs. Wood, 10 N. H., 470.) If the agent assumes to grant or to execute and signs and seals, although he may describe himself as such officer, the deed will be void as to the principal. (State vs. Jennings, 10 Arkansas, 428.) It has been held that the mere signing of the principal's name but making no mention of the attorney is not a valid execution. (Wood vs. Goodridge, 6 Cush. 117.) The conveyance when made by a power of attorney should not only show the conveyance as the act of the principal but also by the name of the agent as the party executing for the principal. If there are two grantors and one executes as the attorney of the other, he must execute as an individual in his own right and as the agent of his principal. This requires him to sign the instrument twice, once as an individual and again as the attorney in fact of his principal. (Meagher vs. Thompson, 49 Cal., 189.)

REVOCATION OF A POWER OF ATTORNEY:

A power of attorney may be revoked by the voluntary act of the principal, or it may be revoked in a number of ways caused by the operation of the law. For instance the death of the principal will operate as a revocation, if uncoupled with an interest. (Ferris vs. Irving, 28 Cal., 645.) The marriage of the principal will also operate as a revocation. (Henderson vs. Ford, 46 Texas, 627.) The principal being adjudged a bankrupt will also act as a revocation.

Occasionally the abstracter will come across a power of attorney which has no showing that the power so delegated has been used. This need give no concern and requires no further consideration.

A power of attorney, unless coupled with an interest, may be revoked orally and such revocation is binding, not only upon the agent himself, but upon third persons who have notice of it. (Jacksonville Terminal Co. vs. Smith, 67 Fla., 10.)

Capacity to Appoint an Attorney:

If a person has the legal capacity to make a deed, he has also, as a rule of law, the privilege of delegating to another the power to do this for him. But many of those who are disqualified from appointing agents are capable of acting as such in the execution of a naked authority to sell and convey (Story on Agency, Sect. 7; Lyon vs. Kent, 45 Ala. 656.) The execution of a deed by an attorney in fact may be ratified by the principal by the personal delivery of the deed. (Mowry vs. Mowry, 103 Cal. 314.)

Powers of Attorney by a Married Woman:

"Any conveyance, mortgage, lease or other transfer of real property, or any interest therein, being the separate property of a

married woman, and every relinquishment of dower executed by virtue of a power of attorney from such married woman shall have the same force and effect as if executed by her in person, if her husband join with her in the execution of such power of attorney, and if she execute and acknowledge the same in the form and manner prescribed for the execution and acknowledgment of the conveyance of her separate real estate or relinquishment of dower, as the case may be, provided such power of attorney be recorded as other powers of attorney are recorded." (Section 3814 F. R. G. S.)

This statutory enactment alters the common law doctrine that a married woman could not execute a valid power of attorney. At common law she could make no conveyance of her lands except through the agency of a court of record.

Authority to Execute a Deed must be by Deed:

The law requires that a power of attorney to execute a deed should be in writing as of the same solemnity as the deed itself, and it is a well settled principle that an agent empowered to sell land is a special agent and all persons dealing with him are charged with notice of the terms and limitations of his authority. (Rhodes vs. Gallat, 70 Fla. 536.) And an agent acting under the authority of a power of attorney can not enter into any agreement with himself by virtue of such authority. (Lainhart vs. Burr, 49 Fla. 315.)

CHAPTER EIGHTEEN

WILLS

Will Defined:

The legal declaration of a man's intention, which he wills to be performed after his death. (Blackstone, Vol. 2, page 500.) Both real and personal property can now be disposed of by Will. It originally designated an instrument disposing of realty only. (Co. Litt 11, Ch. 10.)

The Granting Words of a Will

The granting words usually employed in a will are: "Give," "devise," and "bequeath;" of these words "give" is of the most comprehensive and may be used for the purpose of transferring any and all kinds of property. "Devise" is appropriately used in the gift of realty and "bequeath" of personalty. No specific words are required if it can be gathered from the instrument the intent to convey.

What Property may be Disposed of by Will:

It may be said as a general proposition that all property, both real and personal, corporeal and incorporeal, vested and contingent, legal or equitable, which the owner may be entitled to at the time of his death may be disposed of by his lawfully executed will. While this is likely the general rule now, that has not always been the case. Under statutory provisions property acquired after the making of the Will may now pass in Florida. This was not the case prior to June 13, 1892.

> "Every person of the age of 21 years, being of sound mind, shall have power by last will and testament in writing to devise and dispose of his or her lands, tenements and hereditaments and of his or her estate, right, title and interest in the same, in possession, remainder or reversion, at the **time of the execution of the said last will and testament:** PROVIDED, that every such last will and testament shall be signed by the testator, or by some other person in his or her presence and by his or her express directions and shall be attested and subscribed in the presence of said testator or testatrix by three or more witnesses, or else it shall be utterly void and of no effect." (Act November 28, 1828, Thompson's Digest, page 192; McClelland's Digest, page 985.)

It will be noted first that under this Act, which was the law until 1892, the disposition of property was restricted and limited to real property, and as to that only such as the testator or testatrix might own at the time of the execution of the Will. The Act was construed in the case of Frazier vs. Boggs, 37 Fla. 307, 20 So. 246, and the Court, in speaking of the matter of property acquired after the execution of the will, said:

> "Our statute as we think pointedly confines the power to dispose of lands by will to such lands, or to such estate, right, title or interest therein as the testator had in possession, remainder, or reversion at the time of the execution of the will. Thus concluding it follows that as the testator here did not own or have any interest whatsoever in the lot in controversy until sometime subsequent to the execution of his last will and testament, same did not pass by such will". . .

On June 13, 1892, the Revised Statutes took effect, commonly referred to as the Revised Statutes of 1892. The Statutes did not include the Acts of the year of 1892 in the compilation. By reference to Section 7972 of the Revised Statutes of 1892 it will be seen that the portion of the provision limiting the disposition to property owned at the time of the execution of the will was omitted, and for the first time created a rule of construction as to property acquired after the making of the will.

"Every general and residuary devise or bequest in a will shall be construed to apply to the property owned by the testator at the time of his death unless restricted in the will to that owned by him at the time of the execution of the will. (Sec. 1792 of Revised Statutes of 1892.)

The Revised Statutes of 1892 changed the number of witnesses from three or more to two or more (Section 1795 of Revised Statutes). The change became effective June 13, 1892.

The Act of 1881, Chapter 3249, empowered married women to dispose of property by will the same as if unmarried and this Act is embraced in Section 1793 of the Revised Statutes of 1892.

Sections 1792, 1794, and 1795 of the Revised Statutes of 1892 were carried forward into the General Statutes of 1906 without any change as can be seen by reference to Sections 2269, 2271, and 2272 of the Statutes of 1906. The Section 1793 of the Revised Statutes of 1892 became Section 2270 of General Statutes of 1906, but made it applicable to married women who were minors. The General Statutes of 1906 did not include the Acts of the Legislature for 1905, and these acts are found in the Appendix to the General Statutes of 1906.

Sections 2269, 2270, 2271, and 2272 were carried forward, without change in the Florida Compiled Laws of 1914.

Sections 2269, 2270, 2271, and 2272 and the General Statutes of 1906 and of the Compiled Statutes of 1914 became without change Sections 3592, 3593, 3594 and 3595, respectively, of the Revised General Statutes of 1920, but the Revised General Statutes of 1920 do not include the Acts of the Legislature for 1919.

Attention is further called to the Act of 1828, which provides that "every person of the age of twenty-one years being of sound mind shall have power to dispose of his or her lands, etc.," and that in the Revised Statutes of 1892 (Section 1792 of the Revised Statutes of 1892) the word "her" is omitted; that Section 1793 of the Revised Statutes of 1892 applies only to married women. This forces us to the conclusion that there is no express statutory authority for a single woman to dispose of her property by will, and such authority, if any, can be given only by interpreting Section 1792 of the Revised Statutes of 1892, and Section 2269 of the General Statutes of 1906, and 2269 of Compiled Laws of 1914 and Section 3592 of the Revised General Statutes of 1920 the word "his" to include "her" in a generic sense.

As to age the Courts have held that a person has attained the age required, where twenty-one years is the age, on the last day of his twentieth year. (Bacon's Abr. Wills (B) 481; Ex parte Holyland, 2 Ves. 11.)

Who may Take by Will:

As a general rule any person, including married women, infants, insane persons, and corporations, unless restrained by express provision of statute, may take by will any real or personal property. If a devise is made to a foreign corporation, the power to take is usually governed by the law of the State where the land lies, though the contrary has been held. (Starkweather vs. Amer. Bible Society, 72 Ill. 50. For contrary opinion, see American Bible Society vs. Marshall, 15 O. S. 537.) Unincorporated companies can not take real estate, unless it becomes incorporated before title vests. Gifts to corporations to be thereafter organized are good. (Royer's Estate, 123 Cal. 614.) Municipalities and states can take under a will. (Quincy vs. Attorney-General, 160 Mass. 431; Beurhaus vs. City of Watertown, 94 Wis. 617.) As to whether the Federal Government may take by a will has been decided both ways. (Dickinson vs. U. S., 125 Mass. 311, holds that it can; U. S. vs. Fox, 94 U. S. 315, holds that it cannot.)

PROBATE OF A WILL

Probate of a Will; Defined:

The proceeding by which a will is proved to be that of the testator and legally declared executed.

Courts having Probate Jurisdiction:

Where probate tribunals are established, the chancery or equity courts have no implied jurisdiction over the probating of wills; nor can they decree the probate of a will as incidental to other equitable relief. In Florida the jurisdiction for the probating of a will was determined as early as 1828 by statute.

> "Last wills and testaments both of real and personal property may be admitted to probate upon the oath of any person appointed executor thereto or where no executor is appointed, or where the executor is interested in the estate bequeathed, of any credible person having no interest under the will that he verily believes the writing exhibited as the last will and testament to be the true will and testament of the deceased. Probate may be granted in term or vacation by the county judge." (Act Nov. 20, 1828.)

Effect of Probate:

The jurisdiction of the county judge is exclusive and general over matters of probate of wills and granting of letters of administration. (Epping vs. Robinson, 21 Fla. 36.)

> "The probate of wills so far as concerns any personal estate shall be conclusive as to the validity of the will of which it is the probate, and the probate of wills so far as concerns real property shall be prima facie evidence of the validity of which it is the probate, in any suit or controversy in relation to or concerning the property thereby devised." (Act Nov. 20, 1828.)

Probate of Foreign Wills:

> "Probate of wills (conforming to the laws of this State in the form and manner of execution), duly obtained and granted by any court in any of the states, territories or districts of the United States, or in any foreign country, which relate to property in this State shall be admitted to record in the county judge's court, and shall, when so recorded, have the same force and effect as to the disposition of the property thereby devised or bequeathed, as the probate of wills executed in this State." (Act Nov. 20, 1828.)

After the lapse of twenty years of the record of any deed or the probate of any will purporting to convey lands, no person shall assert any claim to said lands as against the claimant under such deed or will, or their successors in title.

After the lapse of twenty years all such deeds or wills shall be deemed valid and effectual for conveying the lands therein described, as against all persons who have not asserted by competent record title any adverse claim.

Any person whose rights are adversely affected by this chapter will have six months within which to institute a suit to protect such rights and this chapter shall not affect pending litigation. (1925, Chap. 10171, Sect. 1, 2, 3.)"

CHAPTER NINETEEN

ADMINISTRATION OF ESTATES

By Act of 1923, it is declared that no administration shall be necessary under the following conditions:

(1) Where there is a sole heir and the estate is not indebted.

(2) Where the estate is not indebted and there are several heirs who make division of the property amicably among themselves.

(3) Where there is no property except the exempt homestead or exempt personal property.

(4) Where there are heirs consisting of either of the husband or widow no administration shall be necessary in order to enable the husband or widow, as the case may be, to collect in any moneys in banks less than the amount of one thousand dollars, nor to collect any debt, claim or demand owing to the deceased, where the collection would not make the aggregate amount of personal property left by the deceased, including moneys in bank, exceed the sum of one thousand dollars. In every instance the persons seeking to avail themselves of this section shall procure from the county judge an order to be granted upon proof before him of the foregoing circumstances, which order shall adjudge the facts that no administration is necessary on the estate, and shall designate in said order the proper legal heirs entitled to receive the estate without administration. (1883 C. 3434, Sect. 1; 1923 C. 9283, Sect. 1.) (The fourth subdivision was added by the Act of Legislature 1923.)

ADMINISTRATOR'S AND EXECUTOR'S DEEDS.

The distinction which the abstracter or title examiner must keep in mind in the abstracting or examination of land titles is that the Executor derives his powers from the terms of the testator expressed in his Will, and the Administrator derives his powers from the Law and the direction of the Court having jurisdiction in such matters. These derivative powers must be kept in mind in the preparation of the abstract. The Deed, therefore, should embody full compliance with these powers. While no exact wording is necessary in Florida for the conveyance, yet it can be seen that the recitals depend upon the terms expressed either in the body of the will or conditions precedent in law or under the direction of the court.

WHEN LANDS ARE ASSETS IN THE HANDS OF ADMINISTRATOR:

Prior to June 13, 1892, the lands of a deceased person were assets in the hands of the Administrator and as such he might sue to recover the same or defend a suit therefor. Since that date the lands of the decedent have descended directly to the heirs or devisees and remain in their possession until taken possession of by the Executor or Administrator as hereinafter provided.

PREFERENCE IN APPOINTMENT OF ADMINISTRATION:

The preference in the appointment of Administrator of the deceased intestate goes: (1) To husband or wife; (2) To such others as are entitled to distribution of the estate of the intestate in the order of consanguinity; (3) If no such person applies for administration, or if one applying can not comply with the provision of Sec. 3662 R. G. S. F. (2339) after citation duly published for the term of four weeks, once a week, in some newspaper printed in the county where the intestate died, then the said judge may grant administration to a creditor of the intestate or some fit person. The widow's right to administration, however, is conditioned upon her applying (18 Fla. 345). If a married woman is appointed administrator her husband shall file his written consent. (Rev. S. 3661.)

NECESSARY STEPS IN TAKING OUT LETTERS OF ADMINISTRATION:

(1) The necessary petition, under oath, shall be filed stating whether there be any heirs or legal representatives of the intestate in being or not, whether the deceased died without will, and that as such administrator he will well and truly administer all the goods and chattels of the deceased.

(2) The execution and filing of a bond with two or more sufficient sureties, in such penal sum as the Judge may see fit, respect being had to the value of the estate, payable to the Governor of the State or his successor in office. Section 2671 R. S. permits a surety company to make an administrator's bond.

(3) The issuance of the Letters of Administration and the administering of the oath is sufficient compliance as to authorize the administrator to proceed in the administrative duties.

JURISDICTION AS TO ADMINISTRATION:

The county judge shall have jurisdiction of the settlement of estates of decedents and minors; to take probate of wills, to grant letters testamentary, of administration, and of guardianship, and to discharge the duties usually pertaining to courts of probate." (Section 3341 R. G. S. F.)

HOW THE ADMINISTRATOR MAY SELL REAL ESTATE:

When the debts and other legal charges shall exceed the personal estate, or if in the opinion of the administrator the sale of real estate in lieu of personal property is for the best interest of the estate, the administrator may proceed before the court which has jurisdiction to subject the real estate to assets in his hands. To do this the administrator files petition under oath, together with schedule of assets, both real and personal, and of debts and charges against the estate. Not less than thirty days notice by citation shall be given to each heir, if any reason why said petition shall not be granted. The citation shall be served as subpoenas in chancery upon all persons named in the petition and shall also be published for four consecutive weeks preceding the date named therein for hearing in some newspaper published in said county if one be published, if not then by posting at the court house door of said county for said space of time. A copy of said notice shall be mailed to each person named in the petition or citation where they reside beyond the State and their post office addresses are known. **The citation and proof of publication and service of the same and all orders herein provided shall be duly recorded in the court.** Before entering an order by the court for the administrator to take charge of the real estate under such procedure, if there be infants, the court must appoint a guardian ad litem to defend for them; the same applying to persons non-compos mentis. Said guardian ad litem shall make due and diligent inquiry and investigation, file answer and in every other way care for the interest of the persons represented. If the Court shall make the order, from then on the Administrator is the only necessary party to any further proceedings. After he has obtained possession of the real estate in manner provided in Section 3757 R. G. S. F. (2418), then he may proceed to file petition for the sale of land with the court having jurisdiction of the matter.

PETITION TO SELL LANDS:

After the Administrator has obtained the order of the Court for the possession of the lands, he may proceed to file petition for the sale without formality or further notice or citation to anyone interested. The Court may, in its discretion, require notice of the filing of said petition. It is to be well remembered that the Court exercises its discretion at all times in the matters of administration for the best interest of the estate.

ORDER OF SALE OF REAL ESTATE:

Section 3978 (2617) provides that the lands of the decedent may be

sold as the court directs by an executor, administrator or guardian, as the case may be, or a commissioner appointed by the court. Also, see Section 3762 (2423).

NOTICE OF SALE:

Such sales, except when permitted by the order of the Court to be private, shall be at public outcry, after four weeks notice of the time, place and terms of sale; the notice also to contain a description of the property to be sold. Such notice shall be given by publication once a week for four consecutive weeks in a newspaper published in the county where the land lies. If, however, direction is given as to the sale of lands in a will, the order and directions of the testator are to be obeyed. (Sect. 3763 (2424.)

TERMS OF SALE:

Such sales shall be for cash unless the will or court otherwise directs. If a sale is made on credit the terms of the credit and security to be given shall be fixed by the Court.

THE SALE AND THE PURCHASERS THEREOF:

Section 3766 (2427) provides that any executor or administrator having an interest in the estate, which he represents, either in his own right, or in the right of his wife or infant child, as creditor, devisee, legatee or heir at law, may at any public sale of the real estate made as provided under the order of the court exercising jurisdiction, become a bidder therefor; and, if such executor or administrator is the highest bidder at such sale it shall be lawful for him to purchase the same, and such property shall be struck off and sold to such executor or administrator as the highest bidder. The Supreme Court has held, however, in the case of Price vs. Winter, 15 Fla. 66, that an executor cannot acquire an interest at his own sale.

REPORT OF SALE AND CONFIRMATION:

Generally: After each sale the executor or administrator shall make his report to the court exercising jurisdiction for its approval and confirmation. Such report of sale is for the purpose of the court to ascertain as to whether such sale has been made in accordance to the court's direction and to see that no irregularities have been permitted. There is no presumption that the sale is illegal (Deens vs. Willcoxon, 25 Fla. 980), but the report and confirmation is the last step in the entire proceeding. If the sale has been made according to directions of the court and the law, and no irregularities of any kind have been practiced, then the court usually confirms the sale and enters an order to that effect.

When the Executor or Administrator is Purchaser:

The proceeding for confirmation in this event is different from that of the other. If the executor or administrator has purchased the lands, then and in that event upon the filing of the report, the court shall cause notice to show cause why the sale should not be confirmed to be served personally, at least ten days before the sale is confirmed, upon the heirs, devisees, legatees and distributees, when the estate is solvent, and upon the creditors who have filed their claims, or their attorneys of record, when the estate has been declared insolvent, or shall cause notice to be published once each week for four successive weeks in some newspaper published in the county where such sale is made; directed to all persons interested; and if on the day named sufficient cause be not shown to the contrary and the court shall be satisfied that the facts permitting the executor or administrator to purchase, as provided in Section 3766 exist and a compliance with the other requirements of Section 3766 also exist, it shall make an order confirming the sale and directing the execution of a deed. The statute in this case must be strictly complied with for the relation is fiduciary and the courts look with disfavor upon this kind of a proceeding.

SALES IN PURSUANCE OF CONTRACTS OF DECEDENTS:

In all cases where written agreements or contracts shall have been made for the conveyance of real estate and the person making such contract shall have died before the execution of the deed, the executor or administrator may execute such conveyance according to the rules and forms prescribed by law. Such sales shall have the same force and effect as other conveyances of real estate made under and in pursuance of the laws of the State. (Section 3770 (2431). (See Scott vs. Jenkins, 46 Fla. 518; 35 So. 101.)

STATUTE OF NONCLAIM

The Statute of Non-Claim applies to all debts and demands of whatever nature and kind against the estate including **mortgages and judgments** and the Statutes of 1892 did not change the rule.

NOTE: Prior to June 4, 1925, Executors and Administrators were required to publish a notice for eight weeks requiring claims against the estate to be presented within two years (3732 Revised Statutes of 1920) and the Statute of non-claim (3730 Rev. Statutes of 1920) provided that all debts and demands of whatsoever nature not presented to the Executor or Administrator within two years after the first publication, "shall forever afterwards be barred." Section 1 of Chapter 10119, Acts of 1925, effective June 4, 1925, reduced the time for presentation of claims or demands to twelve months from time of first publication and provided that claims must be presented to the county judge instead of the representative of the estate.

By section 2 of said Act of 1925, all claims and demands are barred by limitation, unless sworn to and presented to the County Judge within said twelve months. The Act of 1925 changed the phraseology some, but there is no suggestion that it has changed the rule laid down in Fremd vs. Hogg, 68 Fla. 331, 67 So. 75. In the absence of a decision of the Supreme Court to the contrary, the necessity of presenting the mortgage claim still exists.

SUMMARY

WHAT SHALL THE ABSTRACT SHOW?

1. Petition for administration.
2. Order of court appointing administrator.
3. The Execution of Bond and approval of the same.
4. Oath of the Administrator.
5. Issuance of Letters of Administration
6. Notice to creditors.
7. The procedure in taking charge of the real estate, including petition, together with all schedules, issuance and service of citation, hearing and order of court. Looking to see that those under minority have been represented as required by law. Also an additional bond prior to 1907.
8. Filing of the petition for the sale of lands.
9. Order of the Court with reference thereto.
10. Notice of sale, giving time, place and terms thereof.
11. Report of sale to the court.
12. Confirmation of sale according to requirements of court as hereinbefore provided.
13. The execution of deed showing the recitals of the transaction from the time the administrator filed petition for taking charge of the real estate as assets.

1-A. Appraisement of property should be shown to ascertain whether inheritance tax is due under Federal Government, there being no state inheritance tax.

Page 92, under the head of "Statute of Non-Claim," House Bill No. 130 amends the statute. The Bill reads as follows: "All executors or administrators, on taking out letters testamentary or letters of administration, shall cause a notice to be published once a week for eight consecutive weeks, in a newspaper published in the county wherein said letters testamentary or of administration shall have been granted, notifying creditors, legatees, distributees and all persons having claims or demands against the estate of a decedent, to present the same to the County Judge at his office in the court house of such county within twelve months from the time of the first publication of said notice. Upon the completion of the publication of said notice, proof of publication thereof shall be filed with and recorded by the County Judge. All claims or demands presented to the County Judge shall be duly filed and docketed by him." (Section 1.)

"No claims or demands shall be valid or binding upon an estate, or the executor or administrator thereof, unless the same shall be duly sworn to and presented to the County Judge of the county granting leters testamentary or of administration on an estate, at his office in the Court House of said County; and any claims or demands not so presented within twelve months from the time of the first publication of the notice provided for in Section 1 hereof, shall be barred by limitation. Provided, however, that the lien of a duly recorded mortgage of real property and the right to foreclose same shall not be impaired or affected by failure to present same as hereinabove provided but that the limitation imposed by this Act shall merely bar the right of enforcement of personal liability against the estate of the decedent. (Section 2.)

"In case there shall not be any newspaper published in the county in which such letters testamentary or of administration shall be granted, then the executor or administrator may post such notice in front of the Court House door in such county and at two other public places therein to be prescribed by the County Judge of such county." (Section 3.)

"The Act shall become effective immediately upon its passage and approval by the Governor . . . . . but the same shall not affect any claims or demands against the estate of a decedent where advertisement or notice has heretofore been published or given or is now being published or given, or any suit or action heretofore instituted." (Section 5.) (General Laws, Session of 1927, page 286.)

CHAPTER TWENTY

GUARDIAN'S SALES

The statute provides for the sale of real estate of infants in manner following, to wit:

> "When any guardian of the estate of an infant shall have control or management of any real estate, the property of such infant, and shall think it necessary or expedient to sell the same, it shall and may be lawful for the said guardian to apply either in term time or in vacation, by petition to the county judge or judge of the circuit court for the county in which said real estate may be situated, for authority to sell the same, and if the prayer of said petition shall appear to said judge reasonable and just, he may authorize said guardian to sell said estate under such conditions as the interest of said infant may, in the opinion of the judge, seem to require. Such authority shall not be granted unless the guardian shall have given previous notice published once a week for four successive weeks, in a newspaper published in the county where the application is made, of his intention to make application to such judge for authority to sell the same, setting forth in said notice the time and place and to what judge said application will be made. If the lands lie in more than one county, application shall be made in each county." (Section 3977 (2616) R. G. S. F.)

From the above section is derived the power of the Guardian to make sale of the infant's real estate. It is to be seen that in order for the court to acquire jurisdiction there must be a strict compliance with the law as to the publication of the notice of the intent to apply. Therefore, this would be the first step in the preparation of the abstract. The notice should be given and likely set out in full, so that the examiner may have full advantage of its recitals.

The second step would be the Petition of such Guardian, and the third the Order of the Court with reference thereto. Section 3978 R. G. S. F. provides that the Executor, Administrator, or Guardian may be appointed, or the Court may appoint a Commissioner for that purpose to make the sale and to do all other things relative thereto. The statute permits the discretion of the officer making the sale as to whether it shall be private or public (ib).

Confirmation of Sale:

> "That in all cases where orders have heretofore been made or shall hereafter be made by any court in this State authorizing guardians to sell the real estate of their infant wards, where the sale has not yet been made, a report of such sale shall be made to the Court granting the Order of sale for confirmation, and if the same shall be confirmed by the Court, the sale shall be binding, but if not confirmed the sale shall be of no effect." (3979 R. G. S. F.)

It is to be remembered that this power is statutory and the provisions of the law must be strictly complied with, so as to give the court jurisdiction of the proceedings. (Coy vs. Downie, 14 Fla. 544.) No title in bidder until confirmation. (Knox vs. Spratt, 19 Fla. 817.)

The abstracter therefore to show a complete sequence in the preparation of his abstract in the sale of the infant ward's land should show all proceedings necessary to the appointment of such Guardian, and then: (1) The Verified Notice of Publication; (2) The Petition of the Guardian; (3) The Order of the Court with reference thereto; (4) the Sale of the Land, and if at public sale, notice of sale, etc.; (5) The Report of Sale; (6) the Confirmation, and the execution of the deed to the purchaser.

FOREIGN GUARDIANS

Under Section 3981 R. G. S. F. a Guardian of the estate of an infant duly appointed by a court of another state or territory within whose jurisdiction the infant is domiciled, shall be authorized to receive, manage, control, dispose, or remove the estate or property of the infant situated in the state upon producing to the proper county judge the following duly authenticated papers:

(1) Certified copies of his letters of guardianship and bond or other security, with satisfactory evidence to said county judge that the bond or other security given by said guardian is sufficient to secure the faithful appropriation of the infant's property in this State, or with a new guardian's bond in this State.

(2) Upon complying with this section and filing a proper petition, the county judge, if no cause appear to the contrary, makes an order authorizing said foreign guardian as above provided.

The act provides for the recording of the petition and evidence.

APPLICATION TO SELL REAL ESTATE BY SUCH FOREIGN GUARDIAN:

Section 3983 R. G. S. F. provides that where application to sell real estate by such guardian is made, evidence that he has complied with the preceding section fully shall dispense with the necessity of giving bond as is required of a domestic guardian.

In the abstracting of the procedure in the case of a foreign Guardian it would be necessary to show the following papers:

(1) Certified copy of letters of Guardianship and bond. These to be authenticated according to the requirements of the "Full Faith and Credit Clause of the Constitution."

(2) The petition for the Sale of the lands of the ward. And while the statute is silent as to the Report of Sale and Confirmation, of a necessity this should be the Act of the Judge granting the petition.

It seems that the Act relating to the matter of certified copies of the letters and bond from the foreign State only takes the place of the antecedent steps used in domestic matters of guardianship. From the granting of the Petition to the consummation of the sale is a matter well within the jurisdiction of the Court of the State in which the land is situated. The Confirmation is absolutely essential to the validity of the sale.

CAN THE GUARDIAN BECOME THE PURCHASER:

It is a well settled principle of equity that no person who is placed in a situation of trust or confidence with respect to the subject of a sale can be the purchaser of the property on his own account. This principle is not confined to any particular class but to any and all classes. The rule forbidding conflict between interest and duty is certainly no respecter of persons. It imputes constructive fraud, on account of the natural temptation to actual fraud and the opportunity it affords to conceal it. (Story's Equity Jurisprudence; Grumley vs. Webb, 44 Mo. 444; McGowan vs. McGowan, 48 Miss. 553; Sheldon vs. Rice, 30 Mich. 296.)

In Alabama, however, the Court there held that such purchases and deeds are not void, but voidable at the option of the heirs seasonably expressed. (Frazer vs. Lee, 42 Ala. 25.) The same rule as applies to Alabama likewise applies to Georgia. (Smith vs. Granberry, 39 Ga. 381.) A like holding has been announced by the States of North Carolina, Illinois and New York. But as such sales are viewed with suspicion and are set aside for slight cause, the safe rule is to re-enforce such **sales by deeds** from heirs and beneficiaries; this, however, is still open to equities of unsatisfied creditors to vacate and annul the deed.

Note: For validation of sales made by executors, administrators, guardians and commissioners the reader is referred to page 72 of this

Pages 93 and 94 of Hand Book is a discussion of sales made by guardians. House Bill No. 145 relates to the matter and attempts to validate certain instruments of conveyance made under sales by guardians, etc.

HOUSE BILL NO. 145

AN ACT To Cure all Irregularities in Guardian Sales of Real Estate Made Prior to the Taking Effect of the General Statutes of the State of Florida on December 1, 1906, and Especially Curing all Irregularities Therein Because of the Failure of the Guardian or Commissioner to Make Supplemental Bond; and to Declare Valid all Sales of Real Estate Made by a Guardian or Commisioner of Said Guardian Prior to Said Time; if Said Sales Were Duly Confirmed and Approved by the Probate Court.

Section 1. "That all sales of real estate made by guardians of minors or by a commissioner for said guardian, prior to December 1, 1906 at the time of the General Statutes of the State of Florida went into effect, which said sales are irregular or defective for any cause, and especially because of the failure of the guardian or commissioner for said guardian to furnish supplemental bonds, and which said sales were approved and the said deeds made by the guardian or commissioners having been ordered by the Probate Court, be and all such deeds are hereby declared valid in all respects and in every particular as though the said bond had been furnished and all other minor irregularities fully complied with."

Section 2. "That all such guardian's deed or commissioners' deeds made and predicated upon an order of sale which has been duly approved by the Probate Court, shall be held valid and good in all proceedings had in any court of the state of Florida." (Approved June 4, 1927. General Laws, Session of 1927, page 298.)

In Alabama, however, the Court there held that such purchases and deeds are not void, but voidable at the option of the heirs seasonably expressed. (Frazer vs. Lee, 42 Ala. 25.) The same rule as applies to Alabama likewise applies to Georgia. (Smith vs. Granberry, 39 Ga. 381.) A like holding has been announced by the States of North Carolina, Illinois and New York. But as such sales are viewed with suspicion and are set aside for slight cause, the safe rule is to re-enforce such sales by deeds from heirs and beneficiaries; this, however, is still open to equities of unsatisfied creditors to vacate and annul the deed.

Note: For validation of sales made by executors, administrators, guardians and commissioners, the reader is referred to page 72 of this volume —Author.

CHAPTER TWENTY-ONE

SHERIFF'S DEEDS

The examination of a sheriff's deed with the view of ascertaining its validity and of finding its value in passing on titles to lands depend upon a full showing of the record leading up to the sale.

First, there must be a valid judgment and execution to divest the judgment debtor's title. To ascertain whether a valid judgment has been rendered, is a matter to require a thorough search of the court papers. A search of the original papers must be had, if at all possible.

(1) To obtain a valid judgment requires personal service on the party defendant as required under Section 2599 (1402) of Florida Compiled Laws. This requires that the service of a "writ or summons" to a person to be served is made or effected by reading the writ or summons to him, or the person to be served, or delivering him a copy thereof, or by leaving a copy thereof at his usual place of abode with some person of the family above the age of 15 years, and informing such person of the contents thereof.

OR, a person may acknowledge service and this is sufficient under the statute to give jurisdiction of the person of the defendant. (Shepard vs. Kelly, 2 Fla. 634.)

OR, a general appearance by pleading to a complaint or declaration is a waiver of defects in the service of process. (Florida Railway Co. vs. Gensler, 14 Fla. 122.)

OR, a subpoena in chancery may be served on a wife by delivering a copy to her husband, with whom she is co-defendant. (McLane vs. Plaggio, 24 Fla. 71; 3 So. 823.)

OR, if the party to be served has no family and can not be served personally writ may be served on any person of requisite age who is a member of the family where party resides. (Pyles vs. Beall, 37 Fla. 557; 20 So. 778.)

Service by process by "delivering a true copy on Mrs. M. B., wife of the within named, J. M. B.," does not satisfy statutory provisions. (Barwick vs. Rouse, 53 Fla. 643; 43 So. 753.)

The statutory provisions as to service that when some other person than the party to be served such person shall be "informed of the contents" should be given effect. (Ibid.)

UPON DEFENDANTS REMOVING FROM COUNTY:

If the defendant shall remove from the county where an action has been commenced, and the officer makes such return, it shall be lawful to issue an alias writ or summons and every other legal process necessary to enforce the appearance of such defendant, directed to the proper officer of any county in the State. (Section 2600 (1403.))

Note: In examining title where it appears that an action was begun in one county and service had on defendant in another county, it would be necessary to have the showing that a writ or summons had been issued directed to the proper officer in the county where the action had been started, and the return made thereon that the defendant had removed from the county.

UPON A COPARTNERSHIP,—SERVICE UPON ONE MEMBER IS SUFFICIENT FOR ALL:

When any original process is sued out against several persons composing a mercantile or other firm composing a partnership, the service of said process on any one member of the partnership shall be as valid as if served upon each individual member thereof; and, the plaintiff may, after service on any one member aforesaid, proceed to judgment and execution against them all. (Sect. 1401, R G. S. F.)

Note cases illustrating the Section:

In an action against partners where service has been on one member of the firm, or the service of process is made upon one member of the firm, the judgment obtained in the action may be a lien upon the partnership land and on the individual lands of the partner so served with process, but not on individual lands of the partner who is not served with process. (Florida Brewing Co. vs. Sendoya, 73 Fla. 660; 74 So. 799.)

Also, in order that a service of process upon one member of the firm shall be valid as if served on each individual member, such original process must show upon its face to have been sued out against persons composing a firm. (Hayman vs. Weil, 53 Fla. 127; 44 So. 176.) (Other cases, see 63 Fla. 235; 58 So. 247. Thomas vs. Nathan, 65 Fla. 385, 62 So. 206.)

SERVICE OF PROCESS ON PRIVATE CORPORATIONS:

Process against any corporation, domestic or foreign, may be served; (1) Upon the President, or Vice President, or other head of the corporation; (2) Upon the cashier, or treasurer, or secretary or general manager; (3) Upon any director of such company; (4) Upon any officer or business agent, resident in the State of Florida; (5) If a foreign corporation shall have none of the foregoing officers or agents in this State, service may be made upon any agent transacting business in this State for such corporation.

COMMENT: The provisions of this section are mandatory and in order to bind a corporation by such service, the return must affirmatively show the absence from the county where the suit was instituted of all officers of a superior class designated in the statute of those upon whom service should be had before resort is made to an inferior class. (Drew Lumber Co. vs. Walter, 45 Fla. 253; 34 So. 244.)

It is only necessary to show that these officers were absent from the county where the suit was instituted. It need not be shown absence from the State. (See 45 Fla. 283; 63 Fla. 204.)

RETURN OF PROCESS AND THE RETURN THEREON:

Section 2612 (1414) Briefly the return shall show when the process came to hand, the time when executed, the manner of execution, and the name of the person upon whom service was had, and if in a representative capacity, the position occupied by him.

THE JUDGMENT MUST RESPOND TO THE DECLARATION:

The judgment must respond to the declaration and pleadings, therefore, the safer plan is to look to the pleadings. Cases on the validity of judgments are: Davis vs. Schuler, 14 Fla. 438; Donald vs. McKinnon, 17 Fla. 746; Kendrick vs Latham, 25 Fla., 819; Clem et al vs. Messerole, 44 Fla., 234, 32 So. 815; Hoodless vs. Jerningan, 46 Fla., 213, 35 So. 656. . . .

RIGHT TO AND LIFE OF EXECUTION:

The Plaintiff shall be entitled to his execution at any time within three years after the rendition of any judgment or decree, and upon the issuance of his execution shall be entitled to renew the same upon the return to the clerk's office of the original execution, from time to time for twenty years. (Sect. 2817 R. G. S. F. 1613.)

PROPERTY SUBJECT TO EXECUTION:

Lands, tenements, goods and chattels, equities of redemption in real and personal property, and stock in corporations shall be subject to levy and sale under execution.

NOTICE OF SALE OF PROPERTY LEVIED UPON:

Notice of all sales under execution shall be given by advertisement once each week for four consecutive weeks in a newspaper published in the county in which the sale is to take place, or if there is no newspaper published in the county, by posting notices at the door of the court house of the county and at three other public places in the county for thirty days. (Sect. 2835 R. G. S. F. (1631).

TIME OF SALE:

All sales of property under legal process shall take place between the hours of 11 o'clock in the forenoon, and two o'clock in the afternoon of the first Monday of every month and shall continue from day to day until such property is disposed of. (Sect. 2836 (1632.))

PLACE OF SALE:

All real estate and personal property shall be sold which has been levied upon under execution at the court house door of the county in which the real estate shall be situated. (Sect. 2837 R. G. S. F.)

DEED TO PROPERTY SOLD:

Whenever a sale shall be made by virtue of any execution, the officer making the sale shall, on payment of the purchase money and the costs of the deed or bill of sale, execute to the purchaser a deed of conveyance of the property sold ((1634) Sect. 2838 R. G. S. F.)

The title of a purchaser at a sale under execution is not affected by a subsequent reversal of a judgment on which the execution was based. (Ponder vs. Mosely, 2 Fla. 207.)

A sale of a mortgagees interest under execution does not confer a complete title to property, but gives the mortgagees right subject to redemption by the mortgagor. (Cotton vs. Blocker, 6 Fla. 1.)

THE RECITALS OF THE DEED TO PURCHASER:

The statute provides no recitals, but such deed should give the various steps taken, such as judgment, execution, levy, notice of sale, date of sale etc.

SUMMARY

(1) Look to service to see if made according to law.
(2) See if judgment responds to pleadings.
(3) See to execution and levy.
(4) See if notice of sale was given as provided by law.
(5) See if deed was made according to advertisement and the statute.
(6) See if deed makes the proper recitals to correspond to facts and that the description is given correctly all the way through.

It is to be remembered that a sale under execution does not sell dower interest of wife, or the interest of any one else except the party against whom there is a valid judgment. A purchaser under an execution sale will likely be considered an innocent purchaser against an unrecorded deed.

CHAPTER TWENTY-TWO

STATUTES OF LIMITATION

Who may avail himself of the Statutes of Limitation:

The general proposition of law that when the statute of limitation begins to run it continues to run regardless of subsequent disabilities is made sure by statute in Florida. By an Act of the Legislature, February 27, 1872, it provides:

> "No person shall avail himself of disability unless it existed when the cause of action accrued." (Section 2929 R. G. S. F.)

This section has been construed in one or more instances. For instance in the case of Wade vs. Doyle, 17 Fla., 255 and Futch vs. Parslow, 64 Fla. 179, 60 So. 343, the Court held that if "the Statute begins to run it will continue without being impeded by subsequent disability, such as infancy and coverture. So if the ancestor was alive when adverse possession began, the non-age of his descendants will not check the running of the statute. (Armstrong vs. Wilcox, 57 Fla. 30, 49 So. 41.)

Action for the Recovery of Real Property:

"No action for the recovery of real property, or for the recovery of the possession thereof, shall be maintained unless it shall appear that the plaintiff, his ancestor, predecessor or grantor, was siezed or possessed of the premises in question within seven years before the Commencement of such action." (Sec. 2932 R. G. S. F.)

Actions founded on title to real property:

Section 2933 of the Revised General Statutes of Florida provides:

> "No cause of action or defense to an action founded upon the title to real property, or to rents, or to service out of same, shall be effectual unless it appears that the person prosecuting the action, or making the defence, or under whose title the action is prosecuted or the defense is made, or the ancestor, predecessor or grantor of such person, was seized or possessed of the premises in question within seven years before the accruing of the right of action or defense in respect to which such action is prosecuted or defense made, or unless it appears that the title to such premises was derived from the United States or the State of Florida within seven years before the commencement of such action; and the period of limitation shall not begin to run until the passage of title from the State or the United States."

In the case of Hagan vs. Ellis, 39 Fla., 463, 22 So. 727, the Court held that limitation by adverse possession as against one deriving title from the United States begins to run from the date of the patent, and not from the date of entry or of payment for the lands embraced in the patent.

Adverse Possession Under Color of Title: Section 2935 of the R. G. S. F., provides for a period of seven years.

Adverse Possession without Color of Title: Section 2936 R. G. S. F., provides for a period of seven years.

Action of persons under disability:

If a person entitled to commence any action for the recovery of real property, or to make an entry or defense founded on the title to real property, or to rents or services out of the same, be, at the time such title shall descend or accrue, either: 1, within the age of twenty-one years; 2, insane; or 3, imprisoned, the time during which said disability shall continue shall not be deemed any portion of the time in this chapter limited for the commencement of such action, or the making of such entry or defense; but such action may be commenced, or entry or defense

made, within the period of seven years after such disability shall cease, or after the death of the persons entitled who shall die under such disability; but such action shall not be commenced, or entry or defense made, after that period.

But adverse possession as hereinbefore defined for thirty years shall confer title even as against persons under the disabilities mentioned in this section.

A married woman may prosecute any action concerning her land, in her own name, and without joining her husband. (Sect. 2937 R. G. S. F.)

Limitation of Actions other than for the Recovery of Real Property:

(1) **Within Twenty Years.**—An action upon a judgment or decree of a court of record in the State of Florida, and an action upon any contract, obligation, or liability founded upon an instrument of writing under seal. (Section 2939 R. G. S. F.)

It has been held that the word "seal" written in the scroll attached to the name of the obligor indicates the intention of making the instrument a specialty, and that a promissory note so executed is a sealed instrument. (Comeford vs. Cobb, 2 Fla., 418.)

(2) **Within Seven Years:** Any action upon a judgment or decree of any court of the United States, or of any State or Territory within the United States, or of any foreign country.

(3) **Within Five Years:** An action upon any contract, obligation or liability founded upon an instrument of writing not under seal.

(4) **Within Four Years:** Any action for relief not specially provided for in this chapter.

Note: This applies to a suit in equity claiming dower and mesne profits in "an action for relief not hereinbefore provided for." (Branch vs. Cole, 18 Fla., 368.)

Statute of Non-Claim:

All debts and demands of whatsoever nature and kind shall be presented within two years after the first publication of the notice for. . . . . saving however, to infants, persons of unsound mind, imprisoned or beyond the limits of the the United States, in the military or naval service thereof during war, the said term of two years after their respective disabilities shall be removed. . . . . To sustain a bar statute must be strictly construed, (Cotton vs. Blocker, 6 Fla. 1.) This bar has reference to creditors and not to distributees. (Amos vs. Campbell, 9 Fla. 187.)

Appeals in Chancery:

Appeals from final decrees in chancery may be had at any time within two years from the entry thereof. (Act Feb. 11, 1832.) Changed to six months, Sec Sect 3168 R.G.S.F.

TAX DEEDS

The limitation act of 1887 is not to be confused with act of 1907. The prior act, the limitation began to run from **date of sale,** in the latter act from the date of going into actual possession. The act of 1887 reads as follows:

"No suit or proceeding shall be commenced by a former owner or claimant, his heirs or assigns, or his or their legal representatives, to set aside a tax deed made in pursuance of any sale of land for taxes as against the grantee in such deed, his heirs or assigns or legal representative to recover possession of such land, unless such suit or proceeding shall be commenced within four years after date of such sale." (Section 60, Chap. 3681, Acts 1887.)

In the case of Johnson vs. Ellsworth Trust Co., 58 So. page 249 the complainant never had possession and the deed was void. The defendant was in possession and had been for several years.

Page 101, Sect. 794, R. G. S. has been changed to read:

Section 2. That Section 794 (591) of the Revised General Statutes of Florida, relating to limitation of time in which suits may be brought to recover land in actual possession of purchaser, etc., be and the same is hereby amended to read as follows:

"794. (591). LIMITATION OF TIME IN WHICH SUIT MAY BE BROUGHT TO RECOVER LAND IN ACTUAL POSSESSION OF HOLDER OF TAX DEED, ETC.—When the holder of a tax deed goes into actual possession, occupancy and use of the land embraced in such tax deed, and so continues for a period of four years, no suit for the recovery of possession thereof shall be brought by a former owner or other adverse claimant, unless such suit be commenced within, or prior to, the said period of four years after the holder under such tax deed has entered into the actual possession, occupancy and use of the land embraced in said tax deed; and the holder of such tax deed, where the said real estate is in adverse actual possession, occupancy and use of any person, shall not be entitled to recover possession of such real estate under such tax deed, unless suit for such recovery shall be brought within four years from the date of such tax deed; provided, however, that infants, persons of unsound mind or under guardianship or imprisonment may commence suit or proceedings under this Act within three years after the recovery or discontinuance of such disability.

Any holder of a tax deed or of a tax certificate shall have a lien thereunder for the amount paid therefor upon the land described therein and such lien may be enforced and foreclosed by suit in equity as provided by law for the enforcement of statutory liens."

Sec. 3. That Section 795 of the Revised General Statutes of Florida, relating to the refund of taxes paid, be and the same is hereby amended to read as follows:

795. (592.) PARTY RECOVERING LAND MUST REFUND TAXES PAID AND INTEREST, AND FOR EXPENSES AND IMPROVEMENTS.—If in any suit at law or in equity involving the validity of any tax deed it shall be held by the Court that said tax deed was invalid at the time of its issuance and that title to the land herein described did not vest the tax deed holder, then, if the taxes for which said land was sold and upon which said tax deed was issued had not been paid prior to issuance of such deed, the party in whose favor the judgment or decree in such suit shall be entered, shall pay to the party against whom such judgment or decree shall be entered the amount paid for such tax deed and all taxes paid upon said land, together with twenty-five (25) per cent interest thereon for the first year and eight (8) per cent interest thereon for the time after the first year and all legal expenses in obtaining said tax deed, including publication of notice and Clerk's fees for issuing and recording such tax deed, also the fair cash value of all permanent improvements made upon said land by the holder during the life of said tax deed. The amount of such expenses and the fair cash value of improvements, as aforesaid, shall be ascertained and found upon the trial of the suit, and for which said tax deed holder shall have a prior lien upon said land for the payment of said sums of money in full."

Fla., 582, 6 So. 212.) Under these statutes, the limitation ran from the recording of the deed. They required no actual possession of the land by the holder of the tax deed. As these statutes depended merely upon the recording of the tax deed for a certain period, when the tax deed fell

LIMITATION AS APPLIED TO POSSESSION UNDER TAX DEEDS

"When the purchaser of land at a tax sale goes into actual possession of such land, no suit for the recovery of possession thereof shall be brought by a former owner or claimant, his heirs or assigns, or his or their legal representative, for the recovery of the possession of such land unless such suit be commenced within four years after the purchaser at such sale goes into possession of the land so bought; and the purchaser at such sale, where said real estate is in the adverse actual possession of any person or persons, shall not be entitled to recover possession of such real estate bought at such tax sale unless suit for recovery shall be brought within one year from the date of acquiring the right to such tax title; and where any purchaser of any real estate situated in this State prior to the passage of this act has not entered into and taken actual possession of the same he shall, within one year after the passage of this act, bring suit for the recovery of the actual possession of the real estate described in such tax title, and in default thereof said tax title shall become void and of no effect: Provided, That infants, persons of unsound mind, or under guardianship or imprisonment may commence suit within three years after such disability shall cease." (Section 794 R. G. S. F.)

It has been held that the limitation begins to run from the time of the execution and delivery of the Tax Deed. (Spaulding vs. Ellsworth, 39 Fla.)

See Florida Finance vs. Sheffield, 56 Fla., 285; 48 So. 42;
Sadler vs. Smith, 54 Fla., 671; 45 So. 718.

In the case of Florida Finance Co. vs. Sheffield, reported 56 Fla., 285, 48 So. 42, the Court had before it a Tax Deed bearing date May 12, 1902. The defendant Sheffield relied upon the tax deed coupled with adverse possession. The plaintiff introduced evidence tending to show the tax deed was void, because the assesment of the land was void. . . .

HELD that the tax deed under which the defendant claims was not void on its face, in that it gave the name of the grantee, the number of tax certificate, the date of tax sale for unpaid taxes, the name in which the property was assessed, the amount paid for the certificate, description of the land. (Cowan vs. Skinner, 52 Fla., 486, 42 So. 730.) Furthermore, even though the assessment was void, if the defendant or those under whom he claims went into actual possession for the statutory period prior to the origin of the suit will bar this suit.

HELD further that the limitation prescribed by section 61, C 3413, page 39, Act 1883, sec. 20, C. 1887, page 44, Act 1872, section 63, C. 1976, page 27, Act 1874 will not apply to suits to set aside a void deed or to recover possession of land attempted to be conveyed thereby. (McKeown vs. Collins, 38 Fla., 276, 21 So. 103; Carncross vs. Lykes, 22 Fla., 587; Grisson vs Furman, 22 Fla., 584; Sloan vs. Sloan, 25 Fla., 53; Townsend vs. Edwards, 25 Fla., 582, 6 So. 212.) Under these statutes, the limitation ran from **the recording of the deed.** They required no actual possession of the land by the holder of the tax deed. As these statutes depended merely upon the recording of the tax deed for a certain period, when the tax deed fell

because it was void, there was nothing left for the statute to rest upon and the statute fell with the deed. But a void tax deed may be color of title. (Townsend vs. Edwards, supra.)

HELD that section 591 of the General Statutes (794 R. G. S. F.) is a statute of limitation and begins to run, not from the date of sale, nor the recordation of the deed, **but from the time actual** possession of the land is taken under the deed. (Quoting from Cooper vs. Lee, 59 Ark., 460, 27 S. W. 970; Pillow vs. Roberts, 13 How 472.) The limitations as given in Section 591 General Statute (794 R. G. S. F.) rests upon actual possession of land purchased at a tax sale, when the tax deed falls because it is void, the statute does not fall with the deed, because it rests upon the possession of the land and the deed becomes merely color of title. The statute would not apply if the tax deed was void and no title by adverse possession was shown. (See Sadler vs. Smith, 54 Fla., 674, 45 So. 718) where the defendant was not in possession and did not claim title by adverse possession under void tax deed.

CHAPTER TWENTY-THREE

JUDGMENTS

Judgments for the payment of money arise out of actions at law or equity, and in Florida they become a lien on all the property of the judgment debtor, except judgments out of courts exercising inferior jurisdictions, such as county courts and justice of the peace courts, and these become a lien only upon a sufficient transcript being filed in the office of the Clerk of the Circuit Court in the county in which the land is situated. A judgment may be enforced by execution and the sale of property levied upon by the executive officer. The lien created by a judgment is statutory:

> "Every judgment at law (and decree in equity) which shall be entered in any of the circuit courts of the State shall create a lien and be binding upon the real estate of the defendant in the county where rendered." (Act Feb. 12, 1834; Section 1725 F. R. G. S.)

A judgment becomes a lien on real estate from date of entry. (Wilson vs. Matheson, 17 Fla., 630.)

Judgments rendered in another county, or in a court of the justice of the peace can not be a lien upon the property of the defendant in another county until a transcript of that judgment is filed and entered in a book to be kept for that purpose. The exact wording of the statute is to the effect that:

> "Judgments of county courts, county judge's court and justice of the peace court shall become a lien on the real estate of the defendant situated in any county, from the time of filing in the office of the Clerk of the circuit court for said county of a transcript of such judgment and the entry thereof by the clerk in a book to be kept by him for such purposes." (Act Feb. 22, 1875; Section 1602, F. R. G. S.)

One question is likely to face the examiner with reference to transcripts of judgments from other courts, and that is with reference to the limitation. While the statutory period of limitation is twenty years from date of rendition, and it is a lien upon the property of the judgment debtor from the date of rendition in the county where the land is situated and in case of a foreign judgment a lien from the date of filing of the transcript and the entry thereof in a book to be kept for that purpose, does the lien for twenty years, in case of these transcribed judgments, extend from the date of filing of the transcript? In other words if a judgment is five years old before transcript is made, filed and entered, how long has the statute of limitation to run? In most jurisdictions the date of rendition controls. For instance in the State of Indiana it was held that "the lien of a judgment rendered in a justice of the peace court, does not extend ten years from date of filing the transcript with the Clerk of the circuit court, but ten years from the date of rendition." The period of limitation in that State being ten years. (Mahoney vs. Neff, 24 N. E, 152.) It has also been held in these jurisdictions having a statute to the effect that limitations shall not run during the non-residence of the debtor has no application to the duration of a judgment lien. (Wells vs. Bower, 126 Ind., 115, 25 N. E. 281.)

It will be noticed that the statute with reference to filing and entry of transcript of judgments contemplates two things in this State; one the filing of the transcript and the other the entry thereof by the clerk in a book to be kept for that purpose. This brings us to enquiry of the case where a judgment has been filed and not indexed or improperly or imperfectly indexed, is it a lien upon the property of the judgment debtor? The weight of authority in America is to the effect that the transcript must not only be filed, but must actually be entered in the book provided for that purpose. The courts holding that the judgment transcript or other lien is not completed as an incumbrance until indexed. The purpose of the

index undoubtedly is to give notice. To establish a lien as against innocent purchasers, having no notice thereof, the indexing is necessary. (Thomas vs. Desney, 57 Iowa 58, 10 N. W. Rep., 315; Sterling Mfg. Co. vs. Early, 60 Iowa, 94, 28 N. W. Rep., 458.)

It is likely that partition proceedings divests the lien acquired by a judgment debtor of the interest of one of the parties, but the judgment debtor's lien will follow the funds arising out of the sale in such case. (Eldridge vs. Post, 20 Fla., 579.) A judgment is not a specific lien upon any particular land of the judgment debtor, but extends to all his holdings, subject to prior liens, legal or equitable.

Territorial Extent of Judgment Liens:

For many years it was held that judgments rendered in Federal Courts have the same force and effect as liens on the lands of the debtor within the district that is given to the judgment of the State Courts within the limits of their respective territorial jurisdiction. (Brown vs. Pierce, 7 Wall, 205; Branch vs. Lowrey, 31 Texas, 96; Shrew vs. Jones, 2 McLean 78.) In the State of Florida it was held in the case Doyle vs. Woode, 23 Fla., 90, 1 So. 516, that a judgment obtained in the United States Circuit Court is a lien from the time of its rendition on the lands of the defendant therein lying within the district over which the court has jurisdiction. This decision, however, was rendered in 1887. During the year 1888 an Act of Congress was passed which provided that judgments of the Federal Court shall be liens to the same extent and under the same conditions only as if such judgments and decrees had been rendered by a court of general jurisdiction of such State. It is therefore urged that the Act of 1888 by Congress places judgments of the Federal Courts on the same basis as judgments of the State courts with respect to their liens. It has been accordingly held that where a State statute regulating or restricts the territorial lien of a judgment to the county in which it was rendered, and to counties in which a transcript is filed, such statute since the passage of the Act of 1888 prevents the lien of a Federal judgment from becoming operative throughout the entire district and subjects it to the restrictions of the State law (Blair vs. Ostrander, 47 L. R. A. 469.) There can be but little doubt as to the constitutionality of the power of Congress to make a judgment a lien on debtor's property and fix the territorial limitations of the same. (Dartmouth Savings Bank vs. Bates, 44 Fed., 546.) Congress has never sought to do it, and has conformed its policies to that of the State's policies.

What is the holdings of Florida. The Legislature, in 1925 passed an Act providing:

> "Judgments and decrees recovered in the Federal Courts in the State of Florida shall only create a lien against the real estate of the defendant when a certified copy of such judgment or decree is recorded in the Foreign Judgment Docket of the county wherein the real estate of the defendant is situated and sought to be bound by such judgment or decree." (Sect. 2804 F. C. S.)

Before a judgment can be a lien upon property it must be a valid judgment, and for it to be so the Court must have juridiction of the subject matter and of the parties affected. (Toney vs. Bunner, 60 Fla., 365, 53 So., 337.) Jurisdiction as to parties can be obtained only by subpoena, by publication, or by voluntry appearance, and unless one of these methods of acquiring jurisdiction of the parties is followed, the decree or judgment is void and may be made the target of collateral attack. (Zelnbar vs. Spillman, 25 Fla., 591, 60 So. 214.) But jurisdiction obtained by constructive service may be attacked collaterally. (Myakka Co. vs. Edwards, 68 Fla., 372, 67 So. 217.) It has been held that a judgment for a sum greater than that alleged in the declaration is erroneous. (Cooper vs. Livingston, 19 Fla. 684.)

By an Act of the Legislature, year 1919, it was provided that the Court shall render a deficiency decree for any balance that may remain after the partial payment of the debt, interest and cost in a mortgage foreclosure

against such party or parties as are legally liable for the debt. This makes it quite apparent that the Abstracter should use every means possible to bring the proceedings before the examiner, and should show the amount, debt, interest and costs, together with the amount of the sale. From this the Examiner can ascertain the amount of such possible deficiency judgment. (See Chapter 7839 of the Acts of 1919.)

It may be said that the recitals of a decree of a Court of inferior jurisdiction of the facts necessary to give jurisdiction are prima facie evidence of such facts, subject to be contradicted, but are sufficient of themselves to support the findings, if uncontradicted. (Belden vs. Meeker, 2 Lans, N. Y., 470.) The better practice is to show the process and the return and this will enable the examiner to ascertain as to whether the Court had jurisdiction of the parties, and will strengthen the findings of the Court in the judgment. The style of the Court will enable the examiner to determine its jurisdiction as to subject matter, provided sufficient showing is made as to the subject matter involved in the suit.

When is a Judgment Valid:

No set form of words are required for a judgment, and to constitute a judgment valid upon its face so that it may be enforced it will need to appear that the court rendering the judgment had jurisdiction of the subject matter, jurisdiction of the parties, and that a judgment was in fact rendered. (Maxwell vs. Stewart, 22 Wall 77.)

Judgment by Default:

The final judgment of default should recite the proof of the claim and from such proof the amount found to be due was so much and such recitals should be in language signifying the entry of a judgment for the amount found. (Smith vs. Wilson, 71 Fla., 624, 71 So. 919.)

In abstracting a Judgment to enable the title examiner to pass upon its validity, it is necessary to show these three things, and in order to show that the Court had jurisdiction of the parties service of process should be given or that the same was waived in some way by appearance.

IDEM SONANS:

Sometimes it becomes embarrassing to the abstracter in determining the party against whom judgment is rendered. The title to the abstracted lands may have vested in Henry Hackman, and upon judgment search finds a judgment against "Henry Heckman." Or there may be a change in orthography but none as to sound, as is the case of Seibert and Sibert. On account of this perplexity, the safe rule is to show such judgments and to attach an Abstracter's note calling attention to the same that such judgment is shown for information. The title examiner can then ascertain from competent sources as to whether such judgment applies or affects his chain of title. Sometimes the abstracter may find that the name of the grantee in whom title is vested or through whom it has passed is identical to that of a judgment debtor, but to his knowledge is not the same party. In that case what is the abstracter to do? Show the judgment and remove the perplexing condition by affidavit or his own certificate, is the better plan.

In order for the abstracter to protect himself from liability arising by reason of the doctrine of idem sonans the following is a suggested paragraph to be included, either in the schedule or in the final certificate of his abstract. This will care for most of the cases arising from this trouble and limit liability thereby

Suggested paragraph for abstract:

"JUDGMENTS:—This abstract includes all judgments and decrees for the recovery of money from and against the persons appearing in said abstract, by the names and initials stated, but not otherwise, which have been entered of record in the office of

the Clerk of the Circuit Court in and for said_____ County, Florida; exclusive, however, of such as have been satisfied or released of record, and such, if any, as may have been entered against any of said persons subsequent to the date of filing for record of the conveyances herein shown."

RIGHTS OF SURETIES

"Any person paying money as surety for the principal in any bond or note, which he has signed as surety, upon which judgment has been obtained, shall have the same right to control the said judgment and collect the same with principal, interest and costs, as the plaintiff creditor would have had if the debt had not been paid. Such judgment, and execution thereon, shall have the same lien on the property as though the surety was the original plaintiff. (Section 2807 F. R. G. S.)

The abstracter here should beware that he is not trapped, for the payment of the judgment debt by one who is surety does not release the lands from the judgment lien, but on the other hand subrogates the rights of the judgment creditor to the surety. Careful examination should be made of the judgment to see just what is shown with reference to the relationship.

HOMESTEAD EXEMPTIONS

One way by which the collection of a judgment debt may be deferred or even defeated is by the judgment debtor taking advantage of the homestead exemption as provided for in constitutional and legislative enactments. This is done in two ways, one of which is before levy and the other after levy has been made.

PROCEDURE IN SETTING APART HOMESTEAD AS AN EXEMPTION

The Act of June 23, 1869, provides these two methods of procedure in claiming homestead exemptions.

Before Levy is Made:

"Whenever any person, being the head of a family, residing in this State, shall desire to avail himself or herself of the benefits of the Constitution and laws exempting property as a homestead from forced sale under the process of law, he or she may make a statement, in writing, containing a description of the real property claimed to be exempt, and declaring the same is the homestead of the party in whose behalf such claim shall be made. Such statement shall be signed by the person making the same and recorded in the office of the county judge." (Act June 23, 1869.) (Sect. 2530.)

Rights may be Waived:

Homestead rights may be waived in a mortgage conveyance (Carter vs. Carter, 20 Fla. 558), but otherwise in a promissory note.

What is Necessary to Impress Homestead Rights:

Actual occupancy is necessary to impress homestead rights and not the intention to occupy. (Drucker vs. Rosenstein, 19 Fla. 191.)

Rights of Heirs:

Heirs are entitled to the same exemptions as their ancestors. (McDougal vs. Brokaw, 22 Fla. 98.) And it is not necessary that the ancestor designate

it. (Baker vs. State, 17 Fla. 406.) If some of the heirs be not **sui juris**, and the ancestors occupied more than 160 acres, without designation, such heirs must proceed by action in the Circuit Court, equity side thereof, in order to have a decree setting apart homestead from forced sale. (Chap. 3246, Sec. 2, Mar. 7, 1881.)

Claims against the Homestead:

Generally a judgment for labor and money for improvement of homestead can not be enforced against it. (Lewton vs. Hower, 18 Fla. 872.) Wife is not a necessary party defendant to bill to enforce equitable lien for purchase money. (Porter vs. Teate, 17 Fla. 813.)

DESIGNATION OF HOMESTEAD AFTER LEVY:

Whenever levy shall be made upon the lands or tenements of such defendant, whose homestead has not been set apart, such person, his agent or attorney, may in writing notify the officer making such levy, by notice under oath made before any officer of the State duly authorized to administer the same, at any time before the day appointed for the sale thereof, of what he regards as his homestead, with a description thereof, and the remainder only shall be subject to sale under the levy. (Chap. 1715, Sec. 1, June 23, 1869; Sect. 3876 R. G. S F.)

CHAPTER TWENTY-FOUR

MARRIED WOMEN AND DOWER INTERESTS

Married Women:

The Constitution of Florida, Article XI, Sect. 2, provides as follows:

"A married woman's separate property or personal property may be charged in equity and sold, or the uses, rents and profits thereof sequestrated for the purchase money thereof; or for money or thing due upon any agreement made by her in writing for the benefit of her separate property; or for the price of any property purchased by her, or for labor and material used with her knowledge or assent in the construction of buildings or repairs or improvements upon her property, or for agricultural or other labor bestowed thereon, with her knowledge and consent."

A provision was early made to the effect that a married woman's property should not be sold for her husband's debts.

"All property, real and personal, of a wife, owned by her before marriage or lawfully acquired afterward by gift, devise, bequest, descent or purchase, shall be her separate property, and the same shall not be liable for the debts of her husband without her consent given by some instrument in writing executed according to the laws respecting conveyances by married women." (Revised Statute, Section 2070.)

The Husband Shall join in all Transfers:

"The husband and wife shall join in all sales, transfers and conveyances of the property of the wife." (Rev. Stat., Section 2072.)

"Any married woman owning real property may sell, convey or mortgage it as she might do as if she were not married: Provided her husband join with her in such sale, mortgage or conveyance." (Rev. Stat., Section 1956.)

What is the Separate Property of the Wife:

The separate property of the wife is that of which she has the exclusive control, independent of her husband, and the proceeds of which she may dispose of as she pleases. (Alston vs. Rowles, 13 Fla. 117.)

Married Woman May Make a Will:

"A married woman may dispose of her property, both real and personal, by last will and testament in the same manner as if she were not married." (Rev. Stat., Section 1793; Act Feb. 11, 1881.)

No Restriction as to Acquiring Property:

Her power to acquire property is in no way restricted, but she can not bind herself by an executory contract of any kind so as to authorize a personal judgment against her. (Dalner vs. Snow, 16 Fla. 86; Lewis vs. Yale, 4 Fla. 418; Hodges vs. Price, 18 Fla. 342; McQuaid vs. Fontaine, 24 Fla. 509, 5 So. 274.)

Charges against Her Estate:

Specific performance may be enforced against her. (Sect. 2076 Rev. Stat.) Her real estate is liable for debts incurred in making improvements on it. (Schnabel vs. Betts, 23 Fla. 178, 1 So. 692.) She may charge her separate property by mortgage to secure a note signed by herself and husband. (Mattair vs. Cord, 18 Fla. 761; Dzialynski vs. Bank of Jacksonville, 23 Fla. 436; 2 So. 696.)

If the husband signs and acknowledges a conveyance of his wife's

Page 103, under the title of "The Husband Shall Join in All Transfers" has been changed to read as follows: "Sales and Conveyances—The Husband and wife shall join in all sales, transfers and conveyances of the property of the wife, other than personal property and choses in action." (Section 1, page 4 of the General Acts of the Legislature for 1927).

Page 108, the Chapter relates to "Married Women and Dower interests." House Bill No. 163 amends section 3813 of the Revised General statutes and reads as follows: "Married Women's Covenants.—A married woman who joins with her husband in executing a conveyance or mortgage of real property, or any estate therein, may enter into any covenants as to the title or against encumbrances or of warranty, but such covenants shall have no other effect than to estop her and all persons claiming as her heirs, or by or through her, in the same manner as if she were not married; except that her covenants and warranties which have been or may be made with respect to her separate statutory property shall bind her to the amount of the purchase price received by her for such property, as if she were not married." Act approved May 28, 1927. (General Laws, Session 1927, page 299.)

Page 108 of Hand Book, under the heading of "Married Women and Dower Interests," place the Act hereinafter quoted. Under the Common Law a married woman could not become an incorporator, so House Bill No. 1577 empowers her to become an incorporator and validates Letters Patent of incorporations in which one or more of the incorporators were married women. Act No. 1577 reads as follows: "Married women are hereby declared competent to be incorporators, subscribers, members, stock-holders, directors or officers of any corporation heretofore or hereafter organized or functioning under or pursuant to any existing or former law of Florida." (Section 1.)

"The dejure corporate existence of any corporation heretofore organized or functioning under any existing or former law of Florida shall not be called in question or held invalid because any one or more of the incorporators, subscribers, members, stockholders, directors or officers thereof were married women, nor shall any act, deed or thing done, permitted or suffered by any such corporation or by any incorporator, subscriber, member, stockholder, director or officer thereof be deemed or held invalid for any such cause; and the letters patent or certificate of incorporation, or charter of any such corporation, if invalid for no other cause, is hereby approved, ratified, confirmed and declared to be valid from and after the time of the issuance thereof. (Section 2. Approved June 4, 1927. General Laws, Session of 1927, page 683.)

Time Election Must be Made:

Such an election must be made within twelve months after the probate of the will or the granting of the letters of administration, or she shall be confined to dower. The effect is if she takes dower she will be entitled to a life estate in the real property, to return at her death to the estate of her deceased husband for distribution; if she takes a child's part she shall have set apart to her in fee simple estate in the property . . . with the power to control or dispose of the same.

separate estate with her, it is sufficient, although he is not named in the body of the deed. (Evans vs. Summerlin, 19 Fla. 858.) For construction and history of the constitutional provisions on this subject, see Fairchild vs. Knight, 18 Fla. 770.)

Dower Interests:

Under Act, November 7, 1828, it is provided that:

"That when any person shall die intestate, or shall make his last will and testament, and not therein make any express provision for his wife by giving and devising unto her such part or parcel of real estate . . as shall be fully satisfactory to her, such widow may signify her dissent thereto in the Circuit or County Judge's Court of the county wherein she resides at any time within one year after the probate of such will; and then and in that case she will be entitled to dower in the following manner, to-wit: One-third part of all lands, tenements and hereditaments of which her husband died seized and possessed, or had before conveyed, where she had not relinquished her right of dower as provided by law; which said third part shall be and enure to her proper use and behoof in and during the terms of her natural life. In which said third part shall be comprehended the dwelling house in which her husband shall have been accustomed most generally to dwell next before his death, together with the offices, outhouses, building and other improvements thereunto belonging or appertaining. If, however, it should appear to the judge of the court to which application is made that the whole of said dwelling house, outhouses, buildings and other improvements . . can not be applied to the use of the widow without manifest injustice to the children or other heirs, then such widow shall be entitled to such part, not less than one-third part, as the court may deem reasonable and just." (Sect. 3629 R. G. S. F.)

In 1838 the Legislature made a provision for the widow to make an election of a child's part, if she preferred, in manner following, to-wit:

"In all cases in which the widow of a deceased person shall be entitled to dower, she may elect to take in lieu thereof a child's part." (Act Feb. 8, 1838, Section 1.) A widow is entitled to dower but not a child's part in lands aliened by her husband in his life time. (Reddick vs. Meffert, 32 Fla. 409, 13 So. 894, year 1893.)

In the case of Harrell vs. Harrell, 8 Fla. 46, it was held that the widow electing a child's part, where there are no children, takes one-half of the realty in fee and one-half of the personalty absolutely. This decision now is applicable to testate estates only.

Chapter 1878, Sect. 1, Act of 1872, further provision was made for the widow, which provides:

"If a man die intestate in this State without children, being at the time of his death possessed of real and personal property, or either, the wife shall take the whole estate, or dower at her election." (3631 R. G. S. F.)

Time Election Must be Made:

Such an election must be made within twelve months after the probate of the will or the granting of the letters of administration, or she shall be confined to dower. The effect is if she takes dower she will be entitled to a life estate in the real property, to return at her death to the estate of her deceased husband for distribution; if she takes a child's part she shall have set apart to her in fee simple estate in the property . . . with the power to control or dispose of the same.

Lex Loci in Respect to Dower:

Dower is not the result of contract, nor of inheritance but a positive institutiton of the State, founded on a reason of public policy. (Smith vs. Hine, 10 Fla. 258.) The right of the widow to dower is to be determined by the law of the place where the subject matter of the claim is located. (Apperson vs. Bolton, 29 Ark. 418.) For instance, a woman who is married and domiciled in Louisiana is, nevertheless, on the death of her husband, entitled to dower in lands of which he was seized in Mississippi, although dower is not recognized by law in the former State. (Duncan vs. Dick, Walk. (Miss.) 281.) Furthermore it is a general rule the dower right of the widow is to be determined by the law in force at the time of the death of the husband. (Ware vs. Owens, 42 Ala. 212; Sturdevant vs. Norris, 30 Iowa 65.) But where a married man conveyed lands, and afterwards died, and intermediate the conveyance and his death a statute was enacted enlarging the common law right of dower so as to give the widow an estate in fee, his widow was held to be entitled to dower only according to the law in force at the time of the conveyance. (Moore vs. Kent, 37 Iowa 20; Compare Kennerly vs. Missouri Insurance Co., 11 Mo. 204.) In 1893, the Supreme Court of Florida held that a widow is entitled to dower but not a child's part in lands aliened by her husband in his life time. (Reddick vs. Meffert, 32 Fla. 409, 13 So. 894.)

Requisites of Dower:

The three requisites of dower at Common Law, were marriage, seizin of the husband and death of the husband. The wife's right to dower attaching as soon as there is a concurrence of marriage and seizin. The marriage must be a legal one, and if void there shall be no dower. (See 2 Blackstone Com. 130; Higgens vs. Breen, 9 Mo. 497.) However, if the marriage is voidable only, and is not dissolved during the life of the husband, the widow will be entitled to dower. Furthermore, if in a suit for dower, the fact of marriage is denied, it must be strictly proved. (Jones vs. Jones, 28 Ark. 19.)

Seizin of Husband:

To entitle the widow to dower the husband must have been seized of the lands during coverture. The law does not require any specified length of time for the husband to retain seizin. (Stanwood vs. Dunning, 14 Me. 290.) If, however, the seizin be instantaneous, and the husband, by the same act as a part of the same transaction gives back a mortgage to secure a part of the purchase money, the wife is not entitled to dower therein. (Moore vs. Rollins, 45 Me. 493; Taylor vs. Matthews, 53 Fla. 776, 44 So. 146.) And this is true although the mortgage may not be made to the grantor in the deed, but made to a third party, provided the whole is one transaction. (King vs. Stetson, 11 Allen, 407; Clark vs. Munroe, 14 Mass. 351.) And it was held that where a husband purchased lands, giving his notes as security for the purchase price, and afterwards by his sole deed reconveyed the lands in satisfaction of the note, the wife's right of dower was held not to attach. (Hugunin vs. Cochrane, 51 Ill. 302, 2 Am. Rep. 303; Martin vs. Smith, 25 W. Va. 579.) If a man before marriage makes a deed of conveyance of lands, his widow is not entitled to dower therein, although the deed was unrecorded at the time of the marriage. (Blood vs. Blood, 23 Pick. 80.) Nor is a widow entitled to dower in lands conveyed by husband before marriage although the conveyance was fraudulent and void as against creditors. (Whithed vs. Mallory, 4 Cush. 138.) It has been generally held that if a man immediately before his marriage makes a conveyance of lands, unknown to his wife, and for the purpose of defeating her right of dower and the grantee knows of the purpose, the right of dower attaches and she is entitled to dower. (Brewer vs. Connell, 11 Hump. 500; Cranson vs. Cranson, 4 Mich. 230. But compare Jenny vs. Jenny, 24. Vt. 324.)

Death of Husband:

By the natural death of the husband, the wife's right of dower becomes consummate. (Riddick vs. Walsh, 15 Mo. 519.) During the life of the husband the right is merely inchoate (Wait vs. Wait, 4 N. Y. 95), and is subject to be modified, changed or even abolished by legislative enactment. (Barbour vs. Barbour, 46 Me. 9.) But as between a wife and any other than the State, or its delegate or agent exercising the right of eminent domain, an inchoate right of dower in lands is a subsisting and valuable interest which will be protected and preserved to her. (Simar vs. Canaday, 53 N. Y. 298.) Death of husband may be presumed from continued absence without being heard from. So is it in granting letters of administration. (Newman vs. Jenkins, 10 Pick. 515.) Generally it has been held that the "civil death" of a man does not give his wife the right of dower. (Woolride vs. Lucan, 7 Mon. 49.)

Effect of Divorce:

At common law a divorce a **vinculo matrimonii** bars the right of dower, for the reason that the party claiming dower must have been the wife of the husband at the time of his death. (Dobson vs. Butler, 17 Miss. 87.)

How Barred by Deed:

The usual mode of barring dower is by deed executed and acknowledged according to the statutory requirements of the State in which lands are situated. Florida provides for the release as follows:

> "Any married woman having a right of dower in any real property may relinquish it by joining in the conveyance or mortgage of such real property or by separate deed executed in like manner as other conveyances." (Nov. 15, 1828, Chapter 3011, Sec. 1, Feb. 17, 1877.)

And to render such conveyances valid, it is provided:

> "To render such sale, conveyance, mortgage, or relinquishment, whether of separate estate or of dower, effectual to pass a married woman's estate or right, she must acknowledge before some officer authorized to take acknowledgments of deeds, separately and apart from her husband that she executed the same freely and voluntarily and without compulsion, constraint, apprehension or fear of or from her husband, and the officer's certificate shall set forth all the foregoing requirements." (Feb. 4, 1835, Sec. 1; Chapter 3011, Sec. 1, Feb. 17, 1877.) And in 1885, it was provided that the relinquishment of dower by a minor wife shall be valid notwithstanding her minority at the time of the executiton and acknowledgment." (Section 1959, Revised Statutes of Florida.)

Assignment of Dower:

"Any widow claiming dower may, in default of the heirs or representative for two months to file a petition as provided for in Section 3642, file her petition in the Circuit Court or court of the county judge in the county where her husband shall have usually dwelt next before his death, setting forth the nature of her claim, and particularly specifying the lands, tenements and herediments in which she claims dower, and asking that her dower be allotted to her." (Act No. 7, 1828, Sec. 3; Chapter 380, Sec. 3, Jan. 22, 1851.) The Act further provides that she shall give notice in manner following: to-wit:

> "She shall give ten days notice previous to the application for action on such petition to the executor or administrator, by serving them with a copy of said petition; and where there are no executors or administrators, or where they do not reside in the county of the residence of such widow, or where the widow shall be executrix or administratrix, then she shall give said notice by

advertisement in a newspaper published in said county once a week four consecutive weeks." (Ibid; Sect. 3636 R. G. S. F.)

In proceedings to allot dower the personal representative of the decedent is the only necessary party defendant. (Henderson vs. Chaires, 25 Fla. 26, 6 So. 164.)

The act further provides that after notice has been given the court shall appoint commissioners to set off the widow's one-third interest, and that said commissioners, five in number, freeholders of the county, disinterested, connected with the parties neither by affinity nor consanguinity, shall take the required oath and allot said dower interest by metes and bounds, and shall put her in possession of the same, which shall vest in her an estate for her natural life. (Ibid.)

The Act provides that: "It shall be the duty of the representative of any estate, the heir at law or other person having the next estate of freehold or inheritance in any lands or estate, real or personal, of which the widow is entitled to dower or a child's part, provided he be of lawful age, to lay off and assign such dower as soon as practicable after death of the husband of such widow; and in case where any heir at law, or other person having the next estate of freehold or inheritance in lands or estate, real or personal, shall be a minor, it shall be the duty of the county judge, after the lapse of two months next after the decease of her said husband, to require the representative of any such estate to proceed in causing the dower or child's part to be assigned or set over."

The Method of Assignment:

For the purpose of enabling such person to lay off and assign dower or a child's part, he may file a petition in the circuit court or the court of the county judge, in the county where her husband shall have usually dwelt next before his death, for the laying off and setting apart and assigning the same, which shall after due notice to the widow, be done in the form and manner prescribed by law for laying off, setting apart and assigning dower upon the application of widow. (Section 1843 R. S. F.)

Confirmation or Rejection of Court:

In all cases of assignment of dower or child's part the court to which application is made shall either confirm or reject the allottment or assignment, and such decree of confirmation or rejection shall be considered a final decree, and may be appealed from within the same time and in the same manner and to the same tribunal as appeals from decisions of said court in other cases. (Section 1844 R. S. F.) Notice to confirm is necessary. (Henderson vs. Chaires, 25 Fla. 37.) And the report allotting lands not embraced in the petition must be recommitted. (Brokaw vs. McDougal, 20 Fla. 212.) It is not an error to confirm report of commissioners on same day made and filed especially after notice of application to confirm. (Henderson vs. Chaires, 25 Fla. 26.)

The Right of Dower:

The right of dower is one that can not be waived by parol. (Lothrop vs. Foster, 51 Me. 367.) And it has been held that an inchoate right of dower is such an interest in land that an action may be maintained by a wife for the purpose of establishing such a contingent right and of removing clouds fraudulently attempted to be created. (Wright vs. DeGroff, 14 Mich. 164; Martin vs. Wharton, 38 Ala. 637.)

The assignment of dower, in the absence of statutory provisions to the contrary, may be assigned by parol, as an estate is not created, but only ascertained. In the case of Lenfers vs. Henke, 73 Ill. 405, Mr. Justice Scott, in speaking for the Court, said:

> "The objection that the agreement is not in writing and therefore within the statute of frauds, is not well taken. Treating it as an assignment of dower it was valid, though existing in parol.

Bainbridge in his work on Mines says: 'Dower may be assigned by parol, notwithstanding the statute of frauds, for her estate is not created, but only ascertained, by assignment, and where she has entered after assignment the freehold vests in her without the livery of seizin, whether the assignment has been accomplished by agreement or by the course of law.'" Bainbridge on Mines, 149. See also Conant vs. Little, 1 Pick, 314; Baker vs. Baker, 4 Greenl. 668; Pinkham vs. Gear, 3 N. H. 163; Johnson vs. Neal, 4 Ala. 166.)

THE DOCTRINE OF LACHES AS APPLIED TO DOWER:

Presumption after lapse of an unreasonable time:

Regardless of any statute of limitation, the lapse of an unreasonable length of time before commencing an action for the recovery of dower will raise the presumption that the widow's dower has been relinquished, or otherwise barred or cut off, or will constitute such laches as to bar relief in equity.

A claim for dower will be barred by laches, when the lands in which such claims are asserted have been sold at a Sheriff's sale for 24 years, and the right accrued for 17 years, during which time the claimant has lived in a foreign state, and has made no effort to protect her rights, and the lands have been passing through the hands of various parties.

Note: In the case Judge Terrell said:

"The writer is of the opinion that the statute of limitation in this state has no application to dower, but is directed to claims for debt and asserted titles to real estate. Dower is not classed under either of these heads, and the decided weight of authority is to the effect that, unless the statute is directed specifically to dower it is not covered thereby, 9 R. C. L. 612; Farmer vs. Ray, 42 Ala. 125; Scribner on Dower (2nd Ed.), pp. 559 et seq. Holding this view, I think the English statute on the same subject, barring suits for dower unless brought within twenty years from the death of the husband, is applicable here." (Pingree vs. DeHaven, 105 So. 147.)

It sometimes becomes necessary, where the widow has taken a child's part, or has had dower allotted to her, to make a specific and particular showing in the abstract, and in that event it is necessary to make the showing, if such is the case, as is provided for by law. If not attention of the Title Examiner should be directed to omissions. For an abstract to meet the purpose for which it is intended a complete showing of the record should be given in order to enable the Title Examiner to pass upon the record.

Method of Calculating Present Worth of Dower:

It sometimes becomes necessary to ascertain the present worth of the dower interest and for that purpose the following table is given together with the method of determination:

TABLE SHOWING THE PRESENT VALUE OF AN IMMEDIATE ANNUITY OF $1.00 ON A SINGLE LIFE AT 5% INTEREST

Age	Present Value	Age	Present Value	Age	Present Value	Age	Present Value
10	16.505	32	14.857	53	10.905	74	4.8628
11	16.461	33	14.735	54	10.640	75	4.5926
12	16.415	34	14.608	55	10.370	76	4.3248
13	16.366	35	14.475	56	10.095	77	4.0586
14	16.316	36	14.336	57	9.8145	78	3.7939
15	16.263	37	14.191	58	9.5299	79	3.5311
16	16.263	38	14.039	59	9.2413	80	3.2702
17	16.149	39	13.881	60	8.9493	81	3.0135
18	16.088	40	13.716	61	8.6545	82	2.7606
19	16.024	41	13.544	62	8.3574	83	2.5105
20	15.957	42	13.365	63	8.0588	84	2.2607
21	15.886	43	13.179	64	7.7590	85	2.0098
22	15.813	44	12.985	65	7.4588	86	1.7606
23	15.736	45	12.783	66	7.1592	87	1.5175
24	15.655	46	12.574	67	6.8607	88	1.2861
25	15.570	47	12.357	68	6.5642	89	1.0670
26	15.482	48	12.133	69	6.2705	90	0.85453
27	15.389	49	11.901	70	5.9802	91	0.64497
28	15.292	50	11.662	71	5.6942	92	0.44851
29	15.191	51	11.416	72	5.4129	93	0.28761
30	15.084	52	11.164	73	5.1359	94	0.13605
31	14.973						

(From H. S. Wolf's Inheritance Tax Calculations.)

TO ASCERTAIN THE VALUE OF DOWER IN REAL ESTATE:

Quite often it is necessary to compute the value of the widow's dower in real estate. The present value may be ascertained from the above table. The method usually used is to take 5 per cent of the appraised value of the real estate. The table above gives the present value of an annuity for the expectancy of life of the man or woman. For an illustration, if the appraised value of the real estate is $40,000.00 above encumbrances and the widow is 48 years of age, the dower would be calculated as follows:

5% of the appraised value, $40,000.00 equals $2,000.00. 1-3 of $2,000.00 is $666.66 plus. At the age of 48, the age of the widow a dollar annuity for her life (See Table) has a present value of 12.133 Multiplying 12.133 by $666.66 equals $8,088.58, which is the present value of her dower interest, and represents the amount which should be paid to the widow for the release of her dower.

CHAPTER TWENTY-FIVE

ANALYSIS OF PLAT LAW

(of June 11, 1925)

Chap. 10275, Acts of 1925

1. **Materials.**

The proprietor or proprietors of the property are required to cause a survey and true map or plat of the property to be made by a Civil Engineer or competent Surveyor. (Sec. 2)

II. **Plat and Survey Requirements.**

1. **Materials.**

Must be made with India ink "or some other equally substantial and distinct method." (Sec. 3)

2. **Scale.**

Must be made "on a scale sufficiently large to show plainly all details." (Sec. 3)

3. **Cloth.**

". . . . . on tracing cloth of such size as each county may require." (Sec. 3)

4. **Sheets—Numbering if More Than One.**

"In case of a large plat it may require two or more sheets, in which case the sheets are to be numbered, and the number of the sheets to be indicated on the first sheet, below the title." (Sec. 3)

5. **Title or Name of Property.**

a. **Town, City or Village.**

"If the plat be a Town, City or Village, the full name of such Town, City or Village must appear as the title or name of the plat." (Sec. 4)

b. **Addition or Subdivision.**

"If the land platted be an addition to or a subdivision of a Town, City or Village already platted, then shall the title of the plat include, with the name of such addition or subdivision, the name of the Town, City or Village, as the case may be, of which such platted land is a subdivision, or to which it is an addition." (Sec. 4)

6. **Name of County and State.**

"The name of the county and state in which the land platted is situated should appear under the title." (Sec. 4)

7. **Description.** (See also post numbers 10, 14, 15, 16 and 17.)

a. **Must be Complete.**

"The description must be so complete that from it without reference to the plat, the starting point can be determined and the outlines run." (Sec. 5)

b. **Full Details—Township, Range, Section.**

"There shall be written or printed upon the tracing cloth on which map or plat shall be made a full and detailed description of the land embraced in said map or plat showing the Township and Range in which such lands are situated and the Section and parts of Sections platted." (Sec. 5)

c. **Spanish Grant—Metes and Bounds.**

"If the premises are in a Spanish grant or are not included in the

subdivision of the Government surveys, then the boundaries are to be defined by metes and bounds and courses." (Sec. 5)

d. **Tied to Government Corner, etc.**

"The initial point in the description shall be tied to the nearest Government corner, forty-acre corner, or other recorded and well established corner. (Sec. 5)

e. **Re-Subdivision of Part.**

If a subdivision of a part of a previous recorded plat is made the previous lots and blocks shall be given. (Sec. 5)

f. **Re-Subdivision of Whole.**

"If the plat be a re-subdivision of the whole of a previous recorded plat the fact shall be so stated." (Sec. 5)

8. **Dedication.**

"In connection with the description there shall be a dedication of the plat by the owner or owners, and his or their wives, whose signatures must be witnessed, and their execution of the dedication must be acknowledged in the same manner as deeds conveying lands are required to be witnessed and acknowledged. In case the dedication is to be made by a corporation it shall be signed by the President and Secretary, respectively, of the corporation, by and with authority of its Board of Directors." (Sec. 6)

9. **Dedication—Title and Caption. (Uniformity.)**

"In all cases the title, caption and dedication must agree." (Sec. 6)

10. **Permanent Monuments.**

a. **Number.**

"In making the survey a sufficient number of permanent monuments, in no case less than two (2) . . . . . shall be placed. . . . ." (Sec. 7)

b. **Materials, Size, Placing, Marking.**

"The monuments so placed shall be of metal not less than three inches in diameter and 24 inches long, driven in the ground, or if smaller, to be incased in a solid block of concrete, said monuments having the reference point marked thereon." (Sec. 7)

c. **Location.**

(1) **Option as to Location.**

"They shall be placed either within the tract or on the exterior boundaries thereof, or both, so as to provide definite reference points from which may be located any points, lines or lots set forth on the said plat." (Sec. 7)

(2) **Distance Apart.**

The monuments shall in no case "be more than two thousand (2,000) feet apart." (Sec. 7)

(3) **Indication by Distances and Angles.**

"They shall have their position in reference to each other indicated by distances and angles. . . . . ." (Sec. 7)

(4) **Indication as to Government Corner.**

" . . . . . and not less than one of said monuments shall have its location indicated on the plat in reference to the nearest Government corner or other corner referred to in Section 5 hereof." (See 7-d above.) (Sec. 7)

(5) **Designation on Plat.**

"The position of said monuments shall be indicated on the plat by a small circle and shall be marked "PERMANENT REFERENCE MONUMENT" or the initials "P. R. M." to designate the same." (Sec. 7)

11. **Space for Binding.**

"In drawing the map or plat three inches shall be left blank on the left edge of the tracing cloth for binding in the record book." (Sec. 8)

12. **Cardinal Points—Date of Survey—Scale.**

"A plain designation of the cardinal points, the date of survey, and the correct scale of the drawing shall be given. (Sec. 8)

13. **Drawing—How Made.**

"The drawing shall be made in a workman-like manner and must agree with the description." (Sec. 8)

14. **Section and Quarter Section lines.**

"All section lines and quarter-section lines occurring in the map or plat shall be indicated by lines drawn upon such map or plat, with appropriate words and figures."

15. **Where Description is by Metes and Bounds.**

"If the description is by metes and bounds, the point of beginning shall be indicated together with all bearings and distances of the boundary lines." (Sec. 8)

16. **Lots and Blocks.**

a. **Numbering.**

"All lots shall be numbered either by progressive numbers, or if in blocks, progressively numbered in each block, and the blocks progressively numbered or lettered, except that blocks in numbered additions bearing the same name shall be numbered consecutively throughout the several additions." (Sec. 8)

b. **Dimensions.**

"Dimensions of all lots shall be given on the plat. Where all lots in any block are of the same dimensions it shall be sufficient to mark the precise length and width of one tier thereof; but all gores, triangles or other lots which are not square or parallelograms shall have the length of their sides and angles plainly defined by figures." (Sec. 8)

17. **Streets and Alleys.**

a. **Width.**

"Width of all streets and alleys shall be given on the plat." (Sec. 8)

b. **Names or Number.**

"The streets must be named or numbered and the alleys or **public grounds** properly designated." (Sec .8)

18. **Exceptions and Reservations.**

"Excepted parcels must be marked 'Not Included in This Plat.'" "But no strip or parcel of land shall be reserved by the owner when recording a subdivision, unless the same is sufficient in size to be of practical use or service." (Sec. 8)

19. **Accounting for all of land.**

"All land within the boundaries of the plat must be accounted for either by blocks, lots, out lots, parks, streets, alleys or excepted parcels." (Sec. 8)

20. **Certificate of Engineer or Surveyor.**

"The Engineer or Surveyor making the survey or plat shall certify on the plat that it is a correct representation of the land platted and that permanent reference monuments have been placed as called for under Section 7 of this Act." (Sec. 9)

21. **Certificate of Approval by County Commissioners—**

"Before said map or plat shall be presented to the County Clerk for record, the owner or owners shall cause to be placed thereon a certificate of approval by the County Commissioners, Town Board, or Council, or the

Board of Commissioners (in municipalities having a commission form of government) or their accredited representatives, having jurisdiction over the land described in the said map or plat. However, such approval shall not bind the County Commissioners, Town Board, City Council or Board of Commissioners to open up and keep in repair any parcels dedicated to the public in any map or plat so offered, but they may exercise such right at any time. (Sec. 10)

22. **Duty of Officer to Examine Plat, Etc.**

"It is the duty of the County Clerk or other public recording officer, before map or plat is filed, to examine same and see that it complies in form with all the requirements of this act. If the map or plat does not so comply the officer shall return it to the owner for correction." (Sec. 1)

23. **Certificate of Recording Officer.**

"If the Act has been complied with, the recording officer shall so certify (with date of filing for record) on the map or plat and also on the copy thereof required by Sec. 11 of this Act. (Sec. 1)

24. **Recording.**

a. **Map, Plat, Etc., Necessary for Recording.**

"For purposes of record the owner or owners shall present to the County Clerk in and for the County in which the land platted is a part, a map or plat of the land platted drawn on tracing cloth together with a print or photographic copy of the tracing made on cloth." (Sec. 11)

b. **Method of Filing by Clerk.**

"The map or plat on tracing cloth is to be filed by the County Clerk in his office in a book of the proper size for such papers so that it shall not be folded, and kept in the vault. The print or photographic copy on cloth shall be filed in a similar book and kept in his office for the use of the public." (Sec. 12)

Penalty:

"It shall be a misdemeanor for any person or persons to molest any monuments established according to this Act, or to deface or destroy any map or plat placed on public record." (Sec. 13.)

Laws Repealed:

"All laws and parts of laws in conflict with the provisions of this Act are hereby repealed." (Sec. 14)

CHAPTER TWENTY-SIX

SURVEYING

Our system of surveying was developed in a measure by Thomas Hutchins, a Revolutionary patriot, who served under General Greene and under whom he served as "Geographer General."

Rufus Putnam, a cousin of the famous Israel Putnam, was one of the early American Surveyors and was Surveyor General of the American Colonies from 1789 to 1803. To Thomas Jefferson, however, belongs the honor of bringing order out of chaos and placing a system of surveying so as to take its place among the scientific achievements.

OUR PRESENT SYSTEM OF SURVEYING:

Our present system of surveying lands was determined by a Committee appointed by the Continental Congress composed of Thomas Jefferson, Chairman, Elbridge Gerry, of Massachusetts; David Howell, of Pennsylvania; Hugh Williamson, of North Carolina; and Jacob Reade, of South Carolina. In May, 1874, the Committee recommended a system of surveys wherein the public domain was to be divided into "hundreds" of squares, each of ten mile square, and these subdivided into lots of one hundred, beginning at the northwest corner and continuing from west to east and back again. The system, after extensive debate, was rejected.

An April, 1785, an Ordinance was debated which provided for township of seven miles square,—this to be divided into sections. This was the first time the word township and section was used in the nomenclature of surveying. The numbering was to be done as in the paragraph above. However, in May, 1785, an Ordinance was passed providing for townships six miles square, containing thirty-six sections, each one mile square. The first survey under this Ordinance was made in Southeast Ohio and the numbering of the sections was begun in the southeast corner and numbered from south to north and back. This survey is usually spoken of as the "Seven Ranges."

In 1796, May of that year, Congress passed an Act providing that the sections should be numbered from one to thirty-six, beginning in the northeast corner and extending from east to west and back again.

The Present System Adopted:

In 1805 the present system was adopted and the credit of the system is largely due to the untiring efforts and zeal of Thomas Jefferson.

Provisions made for Dividing Sections into Halves:

By an Act of Congress of May 10, 1800, it provided that the townships west of the Muskingum . . . which are directed to be sold in quarter townships to be sub-divided into half sections of 320 acres each . . by parallel lines through the same from east to west and from south to north at the distance of one mile from each other, and marking corners at the distance of each half mile, on the line running from east to west, and the distance of one mile on those from south to north. . .

Provisions Made for Dividing into Quarter Sections and into quarter-quarter sections:

On February 11, 1805, by an Act of Congress provision was made for the subdivision of the public domain into quarter sections, and on April 5, 1832, Congress directed the subdivision of the public lands into quarter-quarter sections. .

INSTRUMENTS USED IN SURVEYING

The Chain for Measurements:

The chain as now used by surveyors is called a "Gunter's chain," from its inventor, Edmund Gunter, a noted mathematician and astronomer who lived in England more than three centuries ago. It is graduated on a decimal scale and gives distance in miles and areas in acres. The old style chain was a chain in fact composed of 100 links or loops, but on account of the wear at the joints it became unreliable. The one now used is a steel tape with the measurement of links and feet marked thereon, being one metal piece it is not subject to the variation by wear. It is 66.06 feet in length. The object of adding .06 of a foot to the 66 feet of ordinary chain is to secure thereby that 66 feet will be set off upon surface of the earth without the application of a greater strain than about twenty pounds by the chainmen, thus providing for loss by vertical curvature of the chain and at the same time avoiding the uncertainty attending the application of strains taxing its capacity.

Compass:

The measurement of the angles in surveying is usually done by the use of a compass or transit. The compass consists of a line of sights attached to a graduated circular box, in the center of which is hung, on a pivot, a magnetic needle. This needle, in the absence of disturbing influences, will assume a position in what is called the magnetic meridian. If the magnetic meridian and true meridian were coincident at all places on the earth's surface, the use of the compass would be comparatively simple, but unfortunately this is seldom true. The needle points to the north at a very few places on the earth's surface, and the angle that the magnetic meridional plane makes at any point with the true meridional plane is called the magnetic declination.

The Transit:

The transit consists of a telescope attached to a pointer which may be moved around a graduated circle. It is used in measuring horizontal angles, and with certain attachments vertical angles and distance and for leveling. It is the instrument most used by surveyors.

LINEAR TRANSFORMATION

Gunter's chain to feet.

Chains	0.0	0.01	.02	.03	.04	.05	.06	.07	.08	.09
0.0		.66	1.32	1.98	2.64	3.30	3.96	4.62	5.28	5.94
.1	6.60	7.26	7.92	8.58	9.24	9.90	10.56	11.22	11.88	12.54
.2	13.20	13.86	14.52	15.18	15.84	16.50	17.16	17.82	18.48	19.14
.3	19.80	20.46	21.12	21.78	22.44	23.10	23.76	24.42	25.08	25.74
.4	26.40	27.06	27.72	28.38	29.04	29.70	30.36	31.02	31.68	32.34
.5	33.00	33.66	34.32	34.98	35.64	36.30	36.96	37.62	38.28	38.94
.6	39.60	40.26	40.92	41.58	42.24	42.90	43.56	44.22	44.88	45.54
.7	46.20	46.86	47.52	48.18	48.84	49.50	50.16	50.82	51.48	52.14
.8	52.80	53.46	54.12	54.78	55.44	56.10	56.76	47.52	58.08	58.74
.9	59.40	60.06	60.72	61.38	62.04	62.70	63.36	64.02	64.68	65.34
	0.0	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0
0.0		66	132	198	264	330	396	462	528	594
10.0	660	726	792	858	924	990	1056	1122	1188	1254
20.0	1320	1386	1452	1518	1584	1650	1716	1782	1848	1914
30.0	1980	2046	2112	2178	2244	2310	2376	2442	2508	2574
40.0	2640	2706	2772	2838	2904	2970	3036	3102	3168	3234
50.0	3300	3366	3432	3498	3564	3630	3696	3762	3828	3894
60.0	3960	4026	4092	4158	4224	4290	4356	4422	4488	4554
70.0	4620	4686	4752	4818	4884	4950	5016	5082	5148	5214
80.0	5280	5346	5412	5478	5544	5610	5676	5742	5808	5874

AREA OR CONTENTS OF GROUND

Unit of Measure for Land:

The acre is the common unit of measure for land and is a surface in extent to ten square chains.

A ROOD is one-quarter of an acre.

Since the chain is four rods in length, one square chain contains sixteen square rods; and therefore, an acre, which is ten square chains, contains 160 square rods and a rood contains forty square rods. A square rod is called a perch.

TABLE

Miles	Acres	Roods	Sq. chains	Perches	Sq. links
1	640	2560	6,400	102,400	64,000,000
	1	4	10	160	100,000
		1	2.5	40	25,000
			1	16	10,000
				1	625

LINKS:

When the linear dimensions are links, the area will be expressed in square links and may be reduced to acres by pointing off five decimal places from the right. This is equivalent to dividing by 100,000, the number of square links in an acre.

To Reduce to roods:

Multiply the decimal part, after removing the point five places from the right, by 4, and then point off five places in the product, from the right hand, the figures to the left will express roods.

To reduce to Perches:

If the decimal part of this result is now multiplied by 40, and five places for decimals pointed off, as before, the figures to the left will express perches.

RULES DEDUCED FROM ABOVE STATEMENTS

1st. If links be multiplied by links, the product is reduced to acres by pointing off five decimal places from the right hand.

2nd. If chains be multiplied by links, the product is reduced to acres by pointing off three decimal places from the right hand.

3rd. If chain be multiplied by chains, the product is reduced to acres by pointing off one decimal place from the right hand.

Reducing Rods, Yards and Feet to Chains:

(1) To reduce Rods to chains and decimal of chains, divide the Rods by 4.

(2) To reduce yards to chains, divide the number of yards by 22.

(3) To reduce the number of feet to chains, divide the number of feet by 66.

(4) If you wish to reduce square rods to acres, divide by 160.

(5) If square yards, reduce to acres by dividing by 4840.

(6) If square feet, divide by 43560 will give the number of acres.

TO FIND THE CONTENTS OF A PIECE OF LAND IN THE FORM OF A TRIANGLE

(1) **If the base and altitude are given:** Multiply base and altitude together and divide the product by two.

(2) **To find the area when three sides are given:**

Add the three sides together and take half the sum. From this half sum, take each side separately. Then, multiply the half sum and three remainders together, and extract the square root of the product; the result will be the area.

Example: Triangle whose sides are respectively 20, 30 and 40 chs. The sum is 90, and one-half of sum is 45. Now subtract each side separately. 45—20 equals 25 for remainder; 45—30 equals 15, second remainder; and 45—40 equals 5 chains, the third remainder Now multiply 45 X 25 X 15 X 5 equals 84375. Now extract the sq. root—84375 equals 290.4737.

TO FIND AREA OF AN ELLIPSE:

Measure the semi-axes, then multiply them together, and their product by 3.1416.

TO FIND THE AREA OF A TRAPEZOID:

Take one-half the sum of the two parallel sides, and multiply the half sum by the perpendicular.

TABLES OF EQUIVALENTS

Table No. 1

The following table gives equivalents in linear measure only, and is here used for the benefit of Abstracters and Title Examiners.

				Ft.	In.
			Yd.	1	12
		Rd.	1	3	36
	Fur.	1	5½	16½	198
Mi.	1	40	220	660	7920
1	8	320	1760	5280	63360

Table No. 2

The table below is given as unit equivalents for square measure.

					Sq. ft.	Sq. in.
				Sq. yd.	1	144
			Sq. rd.	1	9	1296
		Rood	1	30¼	272¼	39204
	A.	1	40	1210	10890	1568160
Sq. Mi.	1	4	160	4840	43560	6272640
1	640	2560	102400	3097600	27878400	4014489600

Unit Equivalents

			Link	In.
		Rd.	1	7.92
	Ch.	1	25	198.
Mi.	1	4	100	792
1	80	320	8000	63360

Unit Equivalents

				Pole	Sq. Links
			Sq. Ch.	1	625
		A	1	16	1000
	Sq. M.	1	10	160	100000
Tp.	1	640	6400	102400	64000000
1	36	23040	230400	3686400	2304000000

GOVERNMENT LOTS

Fractional sections and where found:

In order that the abstracters and members of the Bar may familiarize themselves with the methods of the Government in dealing with fractional sections, it is deemed expedient here to give a general outline of the principles practiced by the Government.

First, all sections bordering on the north or west side of a township are fractional; likewise sections bordering on a meandered lake or through which a meandered stream flows are fractional.

Fractional lots defined:

Fractional lots are those irregular tracts of land designated on the plats of the Government surveys. They are to be found only in fractional sections. They are formed under five general conditions: (1) By the excess or deficiency thrown on the exterior sections of a township; (2) By meandered lakes, ponds or rivers which may cover a part of a section; (3) By a recent survey approaching a former survey and where the sections adjacent to such former survey are either in excess or fall short of full sections; (4) By the surveyed sections bounded by a reservation, national park, mining or other private claim; (5) By irregular tracts or strips of land bounded on a lake, river or other body of water and surveyed under special instruction from the Land Department.

Rules for subdividing fractional sections:

(1) Avoid needlessly small subdivisions.

(2) Avoid giving to lots a long shore line with small width.

(3) Apportion the privilege of water front among as many lots as regular division limits will permit.

(4) Let the longer direction extend back from the shore rather than along the water.

(5) Instead of making as many full forty acre tracts as possible leaving small fractions of a few acres along the shore or other boundary, attach such marginal strips to the forties, making tracts of forty-five, fifty, to fifty-five acres.

(6) But if a fractional lot would equal or exceed sixty acres it should be divided.

(7) No lot should be partly in two sections.

Islands, rule with reference to:

Where islands are found in a lake and surveyed, they should be tied to the nearest and most convenient meander corner. The lot or lots of such islands should be numbered consecutively with the other lots of the section in which such island may be situated. If the island is in more than one section, the part in each section should be numbered as to that section.

Lots in Sections in the north boundary of a township:

Lots in north boundary of a township should be numbered consecutively from east to west in each section, except as to Section 6.

Lots in sections on west boundary of townships:

Lots in sections in west boundary of a township should be numbered progressively from north to south, number 1 being in the northwest corner. In Section 6 a different rule prevails.

Lots in Section Six:

The rule in numbering lots in Section 6 is a combination of the two just quoted. In Section 6 the lots are numbered progressively from the

northeast corner to the southwest corner. In all such sections the Southeast Quarter of the Northwest Quarter will contain forty acres.

Uniform System of Numbering Lots:

The Government Manual of 1902 provides for a uniform system for numbering lots as follows:

> "To secure a uniform system of numbering lots of fractional sections . . . . imagine the section divided by three equidistant parallel latitudinal lines into four strips or tiers, numbered from north to south; then, beginning with the eastern lot of the north tier, call it No. 1 and continue the numbering west through the tier, then east in the second, west in the third, east in the fourth tier. A lot extending north and south through two, or parts of two tiers, will be numbered in the tier containing its greater area. In case any tier is without numbered lots, the numbering will be continued in the next tier to the south. This method will apply to any part of a section, regardless of the relative situation of a part or parts surveyed and lotted under prior contract; in the same case the lot numbers will be a continuation of the series already initiated. A section that has been partly surveyed should have no duplication of lot numbers." (Manual 1902, page 234.)

CHAPTER TWENTY-SEVEN

ASSIGNMENT FOR THE BENEFIT OF CREDITORS:

Assignor's Duties:

Sometimes the abstracter is confronted with a conveyance made by the trustee for the benefit of creditors under Sections 4666 to 4673 of the R. G. S. F., or Sections 2926 to 2933 of the General Statutes. In order to procure a basis for such conveyance the necessary steps in the whole proceeding should be shown: The Act of 1889 provides how the assignment shall be made, and that in manner following:

> "No assignment made for the benefit of creditors shall be valid in this State, except the same shall be made in writing and shall provide for an equal distribution of all assignor's real and personal property, except such as is exempted by law from forced sale, among the several creditors of said assignor in equal proportion to their respective demands."

The law further provides that the assignor shall make and subscribe an oath in writing before any officer authorized to administer oaths in the county in which he lives and does business, or of the county or counties wherein is situated the property assigned, not more than ten days after the assignment that he has placed or assigned, and the true intention of his assignment was to place in the hands of his assignee all of his property of every description, except such as is exempt by law from forced sale, to be divided among the creditors in proportion to their respective demands. The Supreme Court held in the case of Williams vs. Crocker, 36 Fla. 61, 18 So. 52, that a failure to comply with this provision with reference to the oath to be taken renders the assignment void. Both the assignment and oath shall be recorded in the office of the Clerk of the Circuit Court.

Assignee's Duties:

The law provides that no one shall be selected and appointed assignee in such assignment who does not give bond to be approved by the Clerk of the Circuit Court of the county where in the assignor lives or does business, or of the county wherein is situated the property assigned, payable to the Governor of Florida in double of the value of property assigned, conditioned for the discharge of his duties.

Notice to be given:

The assignee immediately upon taking possession of the property shall give notice by publication in a newspaper published in the county where the assigned property is situated or where a portion of the same is, once a week for four consecutive weeks to all creditors of the assignor, giving the fact of the assignment and calling upon said creditors to file with him, within sixty days, if the creditors reside within the State, or if beyond the limits of the State, four months, sworn statements of their claims, and shall send by mail a copy of the newspaper containing such notice to each of said creditors, as far as he may know them.

Disposition of Property:

The assignee, as soon as the provisions outlined have been complied with, may proceed to dispose of all the property so assigned at either a private or public sale, whichever may seem to him best.

Application for Discharge:

The assignee, after making disposition of property of the assignor as provided for in said act, shall apply by petition to the judge of the Circuit Court for discharge, provided, however, he gives thirty days notice of such intention by publication of notice in the same paper in which

the notice to creditors was given that such petition will be filed. If it be found that his duties have been performed he may be so discharged.

WHAT THE ABSTRACT SHOULD SHOW

(1) The deed of the assignor.

(2) The oath of the assignor.

(4) The notice to creditors.

(5) The sale and all matters touching the same.

(6) The deed of conveyance.

(7) The notice of the application of discharge and the order of discharge.

CHAPTER TWENTY-EIGHT

QUIETING TITLES

This exceedingly popular action is too uncertain to discuss except as to the underlying principles which should govern the abstracter in making his showing in the abstract for the Title Examiner.

The Question of Service:

In looking into the matter of service, which is the initial step in the procedure, one should have in mind two general rules which have been laid down by the Supreme Court and consistently adhered to throughout and are as follows:

(1) "Where constructive service of process by publication is desired, the statutory requirements must be complied with or the court will be without jurisdiction to proceed in the cause." (99 So. 553.)

(2) "The jurisdiction of the court may be attacked collaterally when it is dependent upon constructive service." (67 So. 217.)

As to known defendants:

As to known defendants, Section 3111 of the Revised General Statutes of 1920 provides the essential steps which are jurisdictional in nature . . . . it must set out,—that is the sworn bill of complaint or affidavit, among other things . . . required to be stated under oath is the belief of the affiant as to the age of the defendants being over or under twenty-one years of age or his age is unknown and that the residence is known to be a state, or country other than this state, etc., or is to the person making the affidavit unknown. (Shrader vs. Shrader, 18 So. 672.) The Section 3111, above referred to, is amendatory of previous legislation. Chapter 3589, Acts of 1885, was amended by Chapter 4129, Acts of 1893, and the requirements as to a statement as to age is about the same in the Acts of 1885 as is the requirements in Section 3111.

As to the Unknown Heirs Defendants:

The mandatory jurisdictional requirements of Section 3112, and 3113 of the Revised General Statutes as amended by Chapter 8465 of the Acts of 1921 require some statement or allegation that the complainant has made an effort to ascertain "whether any known person believed to be interested is living or dead." (Wilson vs. Drumright, 99 So. 533. Decided July 27, 1924.)

As to Resident Defendants:

If the file shows personal service make the proper showing, and if such process is absent a statement should be made of it. The fact that the affidavit stated that affiant believes that the present mail address to be (name of place) does not cure the defect with reference to the adequacy of the affidavit as applied to the residence of the defendant. For aught . . it may be a temporary mailing address. (Ortell vs. Ortell, January Term, 1926, of Supreme Court of Fla.) It was not the legislative

intent to eliminate the necessity of personal service of subpoena upon known defendants residing within the State of Florida. (Tibbits vs. Atwell et al, Supreme Court State of Fla., January Term, 1926.)

STYLE OF THE CASE

As to style of the Order of Publication of Process:

Section 37 of Article V of the Constitution of 1885, now in force, provides that:

"The style of all process shall be, "The State of Florida."

The same provision is embraced within the Constitution of 1839, which was approved by Congress in 1845. It was also in the Constitution of 1868. Section 2590 of the R. G. S. provides that all process shall run in the name of the State of Florida. The provision of the law was first enacted in 1828 and was brought forward through Thompson's Digest of

Page 128 of Handbook and the succeeding page relates in a way to proof of publication and process by publication. House Bill No. 1461 relates to such matters. It reads as follows: Section 1. "Whenever by Legislation a publication or notice in a newspaper has been or is directed or permitted in the nature of or in lieu of process, or for constructive service, or in initiating, assuming, reviewing, exercising, or enforcing jurisdiction or power, or for any purpose, the contemporaneous and continuous intent and meaning of such legislation all and singular, existing or repealed, is and has been and is hereby declared to be and to have been, and the rule of interpretation is and has been, a publication in a paper printed and published periodically once a week or oftener, wholly or in large part in the English language, entered or qualified to be admitted and entered as second class matter at a post office in the county where published, for sale to the public generally, available to the public generally for the publication of official or other notices, and customarily containing information of a public character or of interest or of value to the residents or owners of property in the county where it is published, or of interest or value to the general public." Approved June 4, 1927. (General Laws, Session of 1927, page 670.)

The Guardian:

Section 3155 of the R. G. S. provides that upon the entry of a decree pro confesso against absent unknown defendants after service by publication, the judge shall make an order appointing an attorney, learned in the law, as Guardian for the **absent unknown defendants.** This kind of Guardian came into vogue in Florida by enactment of Chapter 6227 of the Acts of 1911, which is an act amending Sections 1 and 3 of Chapter 5393 of Acts of 1905, which act provides for service by publication upon unknown parties in certain chancery suits and for decrees and other proceedings after such service and contains sections numbered from 1 to 4 inclusive, but did not provide for an appointment of a Guardian for unknown defendants. The Act of 1911 amends Sections 1 and 3 of the Act of 1905 and provides for the appointment of a guardian. Section 1

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"Branch vs. Branch, 6 Fla. 314, Jnauary Term, 1855; State of Fla. vs. Gleason, 12 Fla. 190, November, 1868; Gilner vs. Bird, 15 Fla. 410, June, 1875.

Proof of Publication:

Section 3113 of the Revised General Statutes as amended by Chapter 8465 of the Acts of 1921 provides that the "Proof of Publication" shall be made by affidavit of the owner, publisher, proprietor, editor, business manager or foreman of the newspaper in which the order shall have been published, and such affidavit shall set forth the date of each publication of said order.

Decree of Pro Confesso:

No decree pro confesso can be entered until proof of publication has been filed, and no decree entered against any person not properly served. (53 Fla. 1069.)

The Guardian:

Section 3155 of the R. G. S. provides that upon the entry of a decree pro confesso against absent unknown defendants after service by publication, the judge shall make an order appointing an attorney, learned in the law, as Guardian for the **absent unknown defendants.** This kind of Guardian came into vogue in Florida by enactment of Chapter 6227 of the Acts of 1911, which is an act amending Sections 1 and 3 of Chapter 5393 of Acts of 1905, which act provides for service by publication upon unknown parties in certain chancery suits and for decrees and other proceedings after such service and contains sections numbered from 1 to 4 inclusive, but did not provide for an appointment of a Guardian for unknown defendants. The Act of 1911 amends Sections 1 and 3 of the Act of 1905 and provides for the appointment of a guardian. Section 1

of Chapter 5395, Acts of 1911, was brought forward as Section 3112 of R. G. S., while Section 2 was brought forward as Section 3113, Section 3 as Section 3155 and Section 4 as Section 3157 R. G. S.

Chapter 8465, Acts of 1921. is another step in the evolution of the remedy against the unknown defendants. It amends Sections 3112 of the R. G. S., formerly Section 1 of Chapter 5395, Acts of 1905, as amended by Chapter 6227, Acts of 1911, Section 3113, formerly Sectiton 2 of Chapter 5395, Acts of 1905, which was not amended by said Chapter 6227, Acts of 1911.

It Must State the Nature of the Suit:

In the publication of the order, the nature of the suit must be stated to amount to due process of law. (Pennoyer vs. Neff, 95 U. S. 714; Hinley vs. Wilson, January Term, 1926, of the Supreme Court of Florida.) The statement in the right hand margin to the effect that it is a suit to quiet title is not sufficient.

The Wives and Widows:

The right of a widow to dower is statutory, and does not take as an heir or devisee, etc., and can not be made a party defendant by bringing a bill against the class of defendants, known as "heirs, grantees, legatees, distributees, etc. And where a decree is prayed for that the complainant is the owner in fee simple it is necessary and indispensable that the wives and widows, if any, be made parties to the suit. (Nelson vs. Haisley, 39 Fla. 145, 22 So. 265; Post vs. Adams, 39 Fla. 207, 22 So. 652; Florida Land Rock Phosphate Co. vs. Anderson, 59 Fla. 501, 39 So. 392.)

WHAT THE ABSTRACT SHOULD SHOW

(1) Extract from Progress Docket which will give each step in the case, and will show the payment of costs and final disposition of the case.

(2) Notice of Lis Pendens.

(3) Bill of Complaint, so the examiner may know whether the decree responds to the complaint

(4) Order of Publication.

(5) Proof of Publication.

(6) Decree Pro Confesso, if any.

(7) Appointment of a guardian ad litem for the minors or absent unknown defendants.

(8) Appointment of an examiner to take proof.

(9) Final Decree.

Note: For the acts of 1925 relating to the matter of quieting title, see the heading "Quieting Land Titles" in the Appendix.

CHAPTER TWENTY-NINE

TAX TITLES

A statutory mode of divesting title of one owner of lands and creating a title to the same lands in another is by a sale of lands for the payment of taxes by some authorized agent of the State. The consideration being small and incommensurate with the value of the property sold causes likely the Courts to exercise judicial discretion against such sales. Furthermore, the power to sell the lands is a naked one, not coupled with an interest, and for that reason the law requires that every prerequisite to the exercise of that power be exercised in such cases. (Clark-Ray Johnson Co. vs. Williford, 62 Fla. 453; Stephens vs. Futch, 73 Fla. 708; Kuch vs. Enriquez, 28 Fla. 597, 10 So. 91.)

Most Title Attorneys realize the peril of attempting to secure a marketable title through a tax sale. This distrust is likely inspired by reason of the many technical errors attending the various acts leading up to the final execution of the tax deed, and it is the purpose of this chapter to give some method of attack in investigating a Tax Sale.

POINTS OF ATTACK

ASSESSMENT OF PROPERTY

Pages 131 and 132. The manner of assessment of property has been changed: "Section 1. That Section 716 of the Revised General Statutes of Florida be and the same is hereby amended to read as follows:

"Section 716. ASSESSOR TO REQUIRE OATH AS TO PERSONAL PROPERTY; ASSESSOR MAY INCREASE VALUATION; COMPLAINT AS TO VALUE.—Every county assessor of taxes shall require any person giving in the amount or list of his personal property to make oath before him that the same is full and correct, and any person refusing to take such oath shall not be permitted afterwards to reduce the valuation made by such county assessor of his personal property for that year. The valuation of any item of property, real or personal, by the taxpayer, shall in no case prevent the county assessor of taxes from determining the true value, and if shall acertain or have reason to believe that the valuation of any item of property is too small, he shall increase the same to its true value. That when the tax assessor shall raise the value on any property or item of property given in and by the owner or taxpayer under oath, it shall be the duty of the tax assessor to at once give notice in writing by registered mail to such owner or taxpayer, such notice to give the amount of the raise or increase.

"Provided, however, that a failure of the tax assessor to mail any such notice shall not in any manner affect the legality of any assessment or valuation of any property by the tax assessor, and the legality of any such assessment on valuation shall not be questioned in any of the courts of this State."

property, after that time the property is assessed as UNKNOWN. (Nell vs. Browning, 73 Fla. 316, 74 So. 215.) The failure of the assessor to visit once the precinct for the purpose of assessing the property will not vitiate the sale.

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POINTS OF ATTACK

ASSESSMENT OF PROPERTY

The manner of assessment as provided by statute must be strictly llowed. This, of course, can be obtained from the different revenue ws which have been enacted from time to time in the State, and in der to be enabled to ascertain the validity of the assessment and other ts incident to the sale of the lands, an acquaintance with the revenue w in force at that time is necessary. There are, however, underlying inciples which will likely control in any and all of these matters, and tention is called to these in a general way.

SSESSMENT DEFINED:

Assessment is the entering upon the Assessment Roll by the legally uthorized officer of the county in which the land is located, for the year or which taxes are due, the following items: (1) Party Assessed; (2) the escription of the Property; (3) the value as fixed by proper tribunal; nd (4) the millage for various purposes as fixed by proper authorities.

FFICER AUTHORIZED TO MAKE THE ASSESSMENT:

(1) **An assessment for taxation must be made by the officer de jure or defacto, authorized by law to make it or it will be invalid.** (Tampa vs. Kaunitz, 39 Fla. 683, 23 So. 416.) The county collector may assess property omitted from Assessment Rolls any time prior to the 1st day of April of each year. The assessment is made in triplicate by the collector and by him disposed of as the law requires. The Board of Commissioners can not make assessment but can equalize only.

TIME FOR ASSESSMENT OF PROPERTY:

(A) The time for assessment of property as given by Statute is directory and not mandatory. The assessment must be completed by the first Monday in July. April the 1st is the last day the owner has to assess his property, after that time the property is assessed as UNKNOWN. (Neil vs. Browning, 73 Fla. 316, 74 So. 215.) The failure of the assessor to visit once the precinct for the purpose of assessing the property will not vitiate the sale.

(B) The levy of taxes and fixing of the millage by the Board of Commissioners, which will be found on the minutes of the Board. This is one of the most important steps. The law requires the County Commissioners to determine the amount necessary to defray the expenses of the county and to enter this at large upon their minutes. The Legislature levies the millage for the State purposes at its biennial session and authorized a levy for county purposes. (Chapter 7807, Acts of 1919.)

(C) The Assessment Roll is prepared by the County Assessor and delivered to the Collector. At the beginning of the Roll should be found the warrant of the Assessor authorizing the collector to collect. (Section 535 Fla. Comp. Laws.) The presence of the warrant is essential to the authority; for the collector derives his authority therefrom. A copy of this warrant should have been copied in the Minutes of the Board. (Section 529 Fla. Compiled Statutes.) At the end of the Assessment roll should be found the affidavit of the assessor as to the correctness of the roll. (Sect. 533.) At the end of the Roll should also be found the Certificate of the Board of Commissioners that they have examined the Rolls and they are correct. (Sect. 529.)

(D) The proceedings of the Board of Commissioners for the equalization of the assessment of valuation should be examined, as it is an important step in the assessment of taxes. If property has been raised and no notice given, serious objections could be raised to it. (Section 525.)

The description of the property:

The description of the property in blocks, unless consented to by the owner, is invalid. (Kissimmee vs. Drought, 26 Fla. 1, 7 So. 525.) And where there are several parcels of land, each parcel must have a valuation placed against it. If, however, the owner assesses it that way he will be estopped to object. (Levy vs. Ladd, 35 Fla. 391, 17 So. 635.) If the statute provides for the assessment of lands in severalty, a gross assessment will be illegal. This doctrine was affirmed by the Florida Supreme Court as late as in 1921. (Florida East Coast Fruitland Co. vs. Mitchell, 85 So. 661.) A greater accuracy in description is required in a Tax Deed than elsewhere. (Jarrell vs. McRaney, 65 Fla. 141, 61 So. 240.) The description must be certain in itself or capable of being made certain by matters in the deed. Other evidence cannot be used.

The Description must show uniformity:

The description of the property must show uniformity throughout. The description on the Assessment Rolls, in the Advertisement of Sale, in the Advertisement for Application for Tax Deed and in the Tax Deed must be identical. (Carncross vs. Lykes, 22 Fla. 587.)

Illustration:

An assessment which describes the land as "part section" is void for uncertainty. (Grissom vs. Furman, 22 Fla. 581.) SW¼ of SW¼ less 10 acres is void for the same reason. (Jarrell vs. McRaney, 65 Fla. 141, 61 So. 240.)

So is a deed void for uncertainty in which the land is described as "lot 3, and the NE¼ of NW¼, less 7 acres." (Johnson vs. Ashland Lumber Co., 52 Wis. 458.) A mistake in the number of acres will not invalidate the deed, if the land is otherwise properly designated and described. (Towel vs. Etter, 69 Ark. 34, 63 S. W. Rep. 53.) It may be said that the rule with reference to assessment is that the assessment is not void on account of the mistake in description, unless it so great that it might probably mislead the owner, and prevent him from ascertaining that his land had been assessed. (Bosworth vs. Danzien, 25 Cal. 296.)

In Whose Name to be Assessed:

The husband is the occupant of the wife's land for assessment purposes. (Paul vs. Fries, 18 Fla. 573.) If no return is made by the owner or his agent, then such assessor shall assess according to the Government survey and shall assess in one assessment all the lands in a section belonging to the same owner as "UNKNOWN."

The collector receives his authority for the collection of taxes from the warrant of assessment. (McLeod vs. Williams, 73 Fla. 338.)

Under the tax laws of 1879 it was held that an assessment made to a person other than the owner or occupant was void, and the purchaser at a sale thereunder took no title. (L'Engle vs. Florida Central & Peninsular R. R. Co., 21 Fla. 353.) It was also held that an assessment to the "Estate of C Parkhurst" is not an assessment to the owner or to the occupant, or as an unknown and therefore void. (L'Engle vs. Wilson, 21 Fla. 461.)

In the case of Daniel vs. Taylor, 33 Fla. 636, 15 So. 313 (1894), Chapter 1976, it was held that an assessment of occupied lands as unknown was void.

In the case of Amos vs. Jacksonville Realty & Mortgage Co., 77 Fla. 403, 81 So. 584, it was held that an assessment of land to "Est. P. B. Hamilton" as owner is not a valid assessment under the law permitting the property to be assessed in the name of the owner as of the year before.

TAX SALE CERTIFICATE

(1912) Under the Statute Laws of 1887, Chapter 3681, Section 56, requires the purchaser of a Tax Sale Certificate to purchase all the certificates held by the State. (Johnson vs. Dupont, 63 Fla. 200, 57 So. 670.)

A tax deed issued on a void certificate is void.

ASSIGNMENT

The certificate of a Tax Sale may be evidence of title to land in the purchaser, but such evidence can not be made to appear in the assignee by assignment. (Billings vs. McDermott, 15 Fla. 60.)

Under the Revenue Law of 1883, where the State is not the purchaser, to enable any other person other than the purchaser to take a deed, there must be an assignment of the tax sale certificate stated in the deed. (Sanders vs. Ransom, 37 Fla. 457, 20 So. 530.)

Tax certificate should not be assigned by a writing operative as a conveyance of the land described in the certificate. (Chapter 3413, Section 36 (1896). (Ibid.)

ADVERTISEMENT OF TAX SALE:

Advertisement of a tax sale is necessary to the validity of sale. (Daniel vs. Taylor, 33 Fla. 636, 15 So. 313.) If the law requires publication in one newspaper, the advertisement in two will be sufficient to vitiate the sale. (Orlando vs. Equitable Building & Loan Association, 45 Fla. 507, 33 So. 986.) The County Commissioners must designate a particular newspaper for the publication of the advertisement and not an "official paper,"

APPLICATION FOR TAX DEED:

It is not absolutely necessary that a record be made of the printed advertisement in the Clerk's office to make the tax sale valid. The main thing is the printed advertisement together with the proof of publication and the filing. (Note: The filing likely is equivalent to recording under Florida laws.)

CONDUCT OF THE SALE OF REAL PROPERTY

A tax sale is void unless supported by a warrant from the Assessor which should be attached to Assessment Roll. (Fla. Savings Bank vs. Brittain, 20 Fla. 507.)

PROPERTY SUBJECT TO TAX SALE:

Land belonging to one individual can not be sold by the Tax Collector for the taxes due on that particular tract together with taxes due on another tract. (Brown vs. Snell, 6 Fla. 741.)

FOR WHAT TAXES SOLD:

Taxes should be assessed during the period of redemption to the owner or occupant or other party subject to assessment, and if a second sale is had after the purchaser of the first sale has obtained a deed, a good title passes to the second purchaser. (Spratt vs. Price, 18 Fla. 289.)

THE EFFECT OF A PORTION BEING ILLEGAL:

If a part of the sale is illegal the whole is illegal. (Graham vs. Florida Land & Mfg. Co., 33 Fla. 356, 14 So. 796.)

APPLICATION FOR TAX DEED:

THE NOTICE REQUIRED IS MANDATORY, and where the Clerk does not give the Notice of an Application for a Tax Deed, the Tax Deed is void. (Clark-Ray Johnson Co. vs. Williford, 62 Fla. 453, 56 So. 938.) The notice is material for the protection of the owner. (Hightower vs. Hogan, 69 Fla. 86, 68 So. 669.)

THE REQUIREMENT OF MAILING A LETTER to the owner, if known, and if not to the last person to whom land was assessed is mandatory and if not complied with the deed is void. (Starks vs. Sawyer, 56 Fla. 596, 47 So. 513; Clark-Ray Johnson Co. vs. Williford, 62 Fla. 453.)

THE PUBLICATION OF THE NOTICE MUST BE THIRTY DAYS before the issuance of the deed. Notice published first on October 5, 1901, and the deed issued November 2, 1901, is void. (Clark-Ray Johnson Co. vs. Williford, 62 Fla. 453, 56 So. 938.)

FAILURE TO MAIL LETTER TO PROPER ADDRESS which could have been ascertained by the exercise of due diligence, the Clerk is without authority to execute a Tax Deed. (Pratt vs. Pope, 78 Fla. 270, 82 So. 805.)

IDEM PERSONAM: The name must be identical throughout the proceeding. For instance, a published notice stated the name as Mrs. M. LaRue, notice mailed to Mrs. M. L. A. Lee. Notice and service held ineffectual. (Hightower vs. Hogan, 69 Fla. 86, 68 So. 669.)

TAX DEED

NOTICE OF APPLICATION FOR DEED:

A tax deed is based upon a tax sale certificate and there is no authority for a tax deed until a tax sale certificate is shown. And the certificate may be transferred by endorsement at any time before redemption or before tax deed is issued therefor. (Acts of 1901.)

THE FORM OF THE DEED PRESCRIBED BY STATE:

Where the State prescribes the form of a deed it becomes substance and essentiality and variation from it will render deed void. (Ropes vs. Kemp, 38 Fla. 233.)

RECITALS AS TO TAX SALE CERTIFICATES IN THE DEED:

There should be an investigation as to recitals relative to Tax Sale Certificate in a Tax Deed, for if a tax sale certificate is made to one

person and the deed to another there must be some evidence of the assignment. If there is no assignment in the deed, under the Revenue Law of 1883, the same is void. (37 Fla. 457; 38 Fla. 233; 73 Fla. 338.)

The Deed Need not Recite the Particular Certificate:

The Statute does not require that the deed recite the particular certificate on whcih the deed was issued when there are several certificates covering the land, nor does it require that the taxes for all the years subsequent to the original sale shall be accounted for in the tax deed.

Page 134 under head of "Application for Tax Deed" the procedure has been changed to read:

AN ACT to Amend Sections 777, 794 and 95 of the Revised General Statutes of Florida, Relating to Notice of Application for Tax Deed, Manner of Obtaining Tax Deed, Limitation and Time in Which Suit May Be Brought, and Refunding of Taxes and Other Expenses Where land is Recovered from Tax Deed Holder.

Section 1. That Section 777 (575) relating to form of and giving notice of application for tax deed, be and the same is hereby amended to read as follows:

777. (575) FORM OF NOTICE.—Notice is hereby given that _____ holder of tax Certificate No. _____ day of _____ A. D. 19____, has filed said certificate in my office and has made application for tax deed to issue thereon in accordance with law. Said certificate embraces the following described property, situated in _____ County, Florida, to wit: _____ The assessment of said property under the said certificate issued was in the name of _____. Unless said certificate shall be redeemed according to law, tax deed will issue thereon on the _____ day of _____, A. D. 19____.

Dated this _____ day of _____

_____

Clerk Circuit Court _____ County, Florida.

It shall be the duty of the clerk issuing such notice to mail a copy of said notice of application for tax deed to the owner of the property for which a tax deed is applied, if such owner be known to said clerk. But this requirement is directory only, and the failure of the clerk to mail such notice to the owner of the property involved in said application shall not affect the validity of the tax deed issued pursuant to such notice.

It is suggested that the abstracter place a page of preliminary information in his abstract preceding the showing of a tax certificate and tax deed, so that the examiner may have the benefit of the scope of the abstracter's search in looking to the validity of the sale. This information may be used as a preliminary page and will acquaint the examiner of the sequence of the investigation presented.

Also, forms are suggested for abstracting the tax roll, advertisement of the sale of the lands, tax sale record book, tax certificate and suggestions as to recitals in the tax deed.

person and the deed to another there must be some evidence of the assignment. If there is no assignment in the deed, under the Revenue Law of 1883, the same is void. (37 Fla. 457; 38 Fla. 233; 73 Fla. 338.)

The Deed Need not Recite the Particular Certificate:

The Statute does not require that the deed recite the particular certificate on whcih the deed was issued when there are several certificates covering the land, nor does it require that the taxes for all the years subsequent to the original sale shall be accounted for in the tax deed. (Cowan vs. Skinner, 52 Fla. 486, 42 So. 730.)

The Description in the Deed must Follow Description in Assessment Rolls:

The deed must follow the description in the Assessment Rolls, and if it departs therefrom it is void. (Grissom vs. Furman, 22 Fla. 581; Levy vs. Ladd, 35 Fla. 391, 17 So. 635; McKeown vs. Collins, 38 Fla. 276, 21 So. 103.)

Where there are several Tax Deeds to same party:

Where there are several tax deeds to the same party, if the first one is valid to vest title in him, the subsequent deeds amount to the payment of taxes only. (Paul vs. Fries, 18 Fla. 573.)

The Deed must be Issued on Valid Certificate:

A Tax Deed issued on a void certificate is invalid. (Johnson vs. Dupont, 63 Fla. 200.)

TAX DEED MAY BE EXECUTED TO HEIRS:

A Tax Deed may be executed to the heirs of person originally entitled to the same, and recitals should be embraced in the deed. (Sams vs. King, 18 Fla. 557.)

DESCRIPTION OF THE LANDS IN THE DEED:

A Tax Deed describing lands as S.W.¼ of the S.W.¼ (less 13 a) 32-18-23, containing 27 acres. does not afford a basis for title. (Jarrell vs. McRaney, 65 Fla. 141, 61 So. 240.) Greater accuracy is required in a Tax Deed than in an ordinary deed. (Ibid.)

EXECUTION OF A TAX DEED:

Under Act of 1874 a deed executed without a witness is void. (Paul vs. Fries, 18 Fla. 573.)

The Clerk of the Circuit Court is the proper person to execute deeds for the State. (Sams vs. King, 18 Fla. 557.)

A deed for the sale of city taxes is issued in the name of the city. by the clerk of the Circuit Court.
(Stieff vs. Hartwell, 35 Fla. 606, 17 So. 899.)

Suggestion to Abstracters:

It is suggested that the abstracter place a page of preliminary information in his abstract preceding the showing of a tax certificate and tax deed, so that the examiner may have the benefit of the scope of the abstracter's search in looking to the validity of the sale. This information may be used as a preliminary page and will acquaint the examiner of the sequence of the investigation presented.

Also, forms are suggested for abstracting the tax roll, advertisement of the sale of the lands, tax sale record book, tax certificate and suggestions as to recitals in the tax deed.

(Suggested page to put in abstract)

"INFORMATION RELATING TO PREREQUISITES OF TAX DEED

The succeeding pages numbered from_____to_____, both inclusive, are placed in this Abstract in order that the Examiner may have the full benefit in his examination to the title conveyed by Tax Deed at page_____ The various acts and duties required of the several officers, under the law existing at that time, have been carefully abstracted, calling attention to patent errors, either by means of underscoring or by abstracter's note.

Assessment of the Property:

The assessment of the property is given as it appears upon the Assessment Roll for the year for which it sold, showing the description as it appears, whether in single parcels or in aggregate, to whom assessed, the valuation placed against each parcel of land, the total amount of the tax, and the Warrant of the Assessor annexed from which the Collector gets his authority.

The Advertisement of the Sale of Lands:

The authority to advertise the lands is given, and whether or not the board of commissioners selected the paper in which the sale was to be advertised. Also, the advertisement of the sale together with affidavit of publication is given as it appears in tax sale record. Assignment of certificate is given wherever it occurs.

Application for Tax Deed:

The published notice of application for Tax Deed together with affidavit of publication is given, and any showing as to mailing a letter to the owner, or the last named person who paid taxes on the lands.

The Tax Deed is fully abstracted in order that the Examiner may have full advantage to pass upon the question as to whether it meets the form as prescribed by law."

ABSTRACT OF ASSESSMENT ROLL

IN RE: ASSESSMENT OF TAXES FOR YEAR_____

The Assessment Roll,_____County, Florida, for the year_____ shows that the lands described were assessed for the year for which sale was made in manner following:

Description	Sec.	Tp.	Rg.	Acreage	To Whom Assessed	Valuation	Total Tax

WARRANT OF THE ASSESSOR READS AS FOLLOWS:

STATE OF FLORIDA

TO_____

TAX COLLECTOR OF _____ COUNTY, FLORIDA

(Here write warrant as it appears.)

ADVERTISING LANDS FOR UNPAID TAXES BASED UPON SELECTION OF A NEWSPAPER BY BOARD OF COUNTY COMMISSIONERS

Section 756 (558) If the taxes upon any real estate shall not be paid before the first day of April of any year, the Tax Collector shall advertise and sell in manner following: He shall make out a statement of all such real estate, specify the amount due on each parcel, together with the cost of advertising and expense of sale in the same order in which lands were assessed, and such list shall be published, once each week, for five consecutive weeks in some newspaper published in the county * * * * said newspaper to be selected by the board of county commissioners at the first regular meeting in February of each year, and the newspaper so selected shall have been continuously published in the county for a period of not less than one year prior to its selection. * * * *

Form suggested in the way of a "Note" for the abstracter to place in his abstract to show that search has been made of the minutes of the Commissioner's Record to ascertain if a paper was selected for the publication of the delinquent list. It may read as follows:

(Suggested Notes)

NOTE: It appears on page_____of the Commissioners Record No._____ that the selection of a newspaper for the publication of the advertisement of the Tax Sale for the year_____was made, the minutes with reference to the matter reads as follows: (Here give the extract with reference to the same and the date)

Or

It does not appear from the Commissioners Record from January first to_____that the annual selection for the publication of the tax sale for the year_____was made as required by law.

Form for abstracting the Tax Sale Record in order that the identity of the description and other necessary matters may be reflected.

TAX SALE RECORD BOOK PAGE

IN RE: Sale of Lands for the Non-payment of Taxes for the Year of

Description	Sec.	Tp.	Rg.	Acreage	NAME OF OWNER	Total Tax	To Whom Sold	By Whom Redeemed or to Whom Deeded

CERTIFICATE OF TAX COLLECTOR

Recites: That the attached list contains a true and correct copy of lands sold by him for the non-payment of taxes at public auction at , beginning at 12 o'clock noon on the first Monday in June, being the day of said month, and that due and legal notice of such sale was given as required by law and that the sale was made in accordance to law.

(Seal)

Signed_____

Tax Collector for County, Florida.

AFFIDAVIT OF PUBLICATION

Recites: That personally appeared, who being duly sworn, stated that he was of a newspaper published in and that the annexed advertisement or notice of sale of the tax sale of was published in said newspaper once each week for five consecutive weeks, beginning with issue of and ending with the issue of and that the other dates of publication wer

(Seal)

Signed:

(Then show verification.)

CLERK'S CERTIFICATE OF RECORDING

Recites: That as Circuit Court Clerk he certifies that the list or report of as Tax Collector was duly recorded in Record Book____, Page ____, on the day of as required by Section 55, Chapter , Laws of Florida. Further that a copy of each issue of newspaper containing a notice of the tax sale, together with affidavit of publisher as required by Section , Chapter , of the Laws of State of Florida has been duly filed in my office.

(SEAL)

Signed_____

Clerk of Circuit Court.

Following the Chapter on "Tax Titles," page 131, Senate Bill No. 248 which relates to Tax Deeds, should be placed. It reads as follows: "Section 1: Wherever a Tax Deed has been issued by the State of Florida, conveying or attempting to convey the title to any real estate in the State of Florida, by reason of non-payment of taxes thereon, no action shall, after one year from the date when this Act shall take effect, be brought by the former owner or owners thereof, or by any person or persons claiming by, through or under him or them, against the grantees in said Tax Deed, his heirs, devisees or assigns, where the grantee or his heirs, devisees or assigns have paid the taxes assessed against the lands described in the said Tax Deed for a period of twenty successive years, at any time after the issuance of said Tax Deed, but the grantee in said Tax Deed, his heirs, devisees or assigns, may, at his or their option, file a bill of Equity to Quiet the Title to the lands described in said Tax Deed, and no defense to said suit, nor attack upon said Tax Deed shall be made, except to show that the taxes assessed against the premises described in said Tax Deed, and for the non-payment of which, said Tax Deed was issued, had been paid before the execution and issuance thereof, by the former owner." "Section 2. "That where a Tax Deed has heretofore been or may hereafter be issued by the State of Florida, conveying or attempting to convey real estate for non-payment of taxes thereon before a patent has been issued thereon by the United States Government, or before a deed of conveyance has been issued thereon by the State of Florida, conveying said premises to any person whomsoever, and thereafter a patent by the United States Government or a Deed of conveyance by the State of Florida has been issued thereon to the party to whom the land was assessed, or to his heirs, devisees or assigns, and the grantee in the Tax Deed, his heirs, devisees or assigns has continued to pay the taxes thereof for twenty successive years at any time after the issuance of the Patent by the United States Government, or a conveyance by the State of Florida, then it shall be presumed that the patentee, or those claiming by or through him, or the grantee in a conveyance from the State of Florida, or those claiming through him, have abandoned the land and all their right, title, interest, and claim thereto, and that the grantee in the Tax Deed, his heirs, devisees or assigns, are the legal owners of the land conveyed or attempted to be conveyed by the said Tax Deed, and he, or they, or any of them, may, after one year from the date this Act shall take effect, at their option, file a bill in Equity to Quiet the Title thereto, and no defense shall be made thereto, by reason of the assessment of the land, or the issuance of the Tax Deed before the United States Government or the State of Florida has parted title therewith; and no attack shall be made on said Tax Deed; save only that the taxes, by reason whereof the tax deed was issued, had been paid my the party or his successors or assigns, to whom the United States Patent or the conveyance from the State of Florida was issued before the issuance of the said Tax Deed."

active. One year is allowed for asserting, under the present laws, rights existing when this Act takes effect."

"Section 5. "This Act shall be construed to be cumulative as of the rights and benefits of grantees under Tax Deeds and of those claiming under them; provided, however, that no litigation pending before this Act becomes effective shall in any way be affected by it. Provided, that this Act shall not apply to infants, persons non compos mentis, or under other disability to maintain suit until one year after the removal of such disability."

"Section 6. "This Act shall take effect immediately upon its passage and approval by the Governor, or upon its becoming a law without the approval of the Governor." Approved June 6, 1927. (General Laws, Session 1927, page 108.)

"Section 3. The provisions of this Act shall apply whether there has been or whether there has not been any actual possession of said premises described in said Tax Deed, by the Grantee, in said Tax Deed, his heirs, devisees or assigns, except that if a Tax Deed has been issued, conveying or attempting to convey real estate in the actual possession of a legal owner thereof, and the legal owner, his heirs, devisees or assigns continue in the possession thereof for a period of one year after the issuance of said Tax Deed, before any action at law, or proceeding, in equity is commenced to dispossess the party or parties in possession, then the provisions of this Act shall not apply."

"Sect. 4. "This Act shall be construed to be both prospective and retroactive. One year is allowed for asserting, under the present laws, rights existing when this Act takes effect."

"Section 5. "This Act shall be construed to be cumulative as of the rights and benefits of grantees under Tax Deeds and of those claiming under them; provided, however, that no litigation pending before this Act becomes effective shall in any way be affected by it. Provided, that this Act shall not apply to infants, persons non compos mentis, or under other disability to maintain suit until one year after the removal of such disability."

"Section 6. "This Act shall take effect immediately upon its passage and approval by the Governor, or upon its becoming a law without the approval of the Governor." Approved June 6, 1927. (General Laws, Session 1927, page 108.)

CHAPTER THIRTY

BANKRUPTCY PROCEEDINGS

The bankruptcy proceedings which are likely to affect titles in Florida classify themselves into two divisions. Proceedings under the law of 1867, together with amendment of 1874, and the law of 1898 which is now in force and amendments to that Act.

The Practice under the Act of 1867:

Under the Act of 1867 the District Courts of the United States were given original and exclusive jurisdiction and were authorized to administer all relief which a court of equity could administer under similar circumstances. (Newman vs. Fisher, 37 Md. 259; 25 Mich. 476.) A revisory jurisdiction could be exercised by the federal circuit courts. The federal district court could exercise extra-territorial jurisdiction in the collection of assets and adjusting the claims of the creditors, but in matters touching the rights of the assignee, under the assignment, when the subject matter in dispute was of a local nature, the rights of the parties could only be determined in local courts. (Whitridge vs. Taylor, 66 N. C. 273.)

The Nature and Effect of the Proceeding:

A person who has been adjudicated a bankrupt may be deemed civilly dead, and it relates insofar as the property is concerned from the time of filing the petition. Under the act of 1867, a voluntary bankrupt was intrusted with the care of his property; under the law of 1898 a receiver may be appointed to hold the property pending adjudication. The interval existing between the filing of the petition and the appointment of the trustee may be likened to the time existing between the death of the intestate and the appointment of his administrator.

The Procedure under the laws of 1867 and of 1898 compared:

Under the act of 1867 the proceedings were conducted under the direction and supervision of an officer designated "Register of Bankruptcy," and he, whenever it became necessary to administer the estate of the bankrupt, made a formal transfer of the bankrupt's property to another officer designated as an "Assignee." Under the act of 1867, the assignee took possession of the bankrupt's property, sold the same, and executed therefor the conveyance to the purchaser.

Under the act of 1898, after the petition has been filed and the petitioner adjudicated a bankrupt, the property is turned over to the Referee who thereafter conducts the proceedings. If the creditors so desire they may have a Trustee appointed

Under the act of 1867, prior to the amendment of 1874, the assignee could make a sale of the bankrupt's property without advertising the sale of the property to be sold.

The act of 1898 was amended in 1903 by an act approved February 5, 1903, which act directs the trustee in such proceeding to file a certified copy of the decree of adjudication in the office where conveyances of real estate are recorded, in every county where the bankrupt holds real estate not exempted from execution, etc. (U. S. Compiled Stat., Supp.

1909, p. 1308.) In the case of Hull et al. vs. Burr (Feb. 14, 1911) the Supreme Court of the State of Florida held that the amendatory act of 1903, "directing the trustee to file a certified copy of the decree of adjudication in the office where conveyances of real estate are recorded, in every county where the bankrupt holds real estate not exempted from execution is **directory** only and does not affect the principle that the bankrupt's title passes by operation of law to the trustees in bankruptcy upon the date of adjudication." (Citing Ward vs. Hargett, 151 N. C. 365, 66 S. E 340.)

The facts of the case of Hull et al. vs. Burr, 61 Fla. 325, 55 So. 852, briefly are given in paragraph 4 of the decision: "The defendant Hull rested on the judgment in ejectment recovered by him in the U. S. Circuit Court for the Southern District of Florida, in March, 1906, in an action commenced November 28, 1905, against the Port Tampa Phosphate Co. and one N. C. Childs, its agent in possession of the lands. The bill of complaint alleged that on November 27, 1905, one day before the action began, the Port Tampa Phosphate Company, a Massachusetts Corporation, but whose principal assets consisted of these Florida lands, was adjudged a bankrupt by the United States District Court for Massachusetts, upon an involuntary petition in bankruptcy filed against it on November 9, 1905; Burr, who qualified on December 27, 1905, was not made a party to the action in ejectment and did not appear therein."

The Court in rendering its decision says: "We are dealing, then, with a case where possession of the res is involved, and where the res is essential to the action. The judgment adjudicates the title and awards possession; whereas by virtue of the adjudication in bankruptcy, the title of the bankrupt at once, by operation of law, passes to the trustee then or thereafter to be appointed The declaration in ejectment must allege the defendant, the bankrupt, is in possession of the land, yet its possession was under its title, which had been divested and passed with this divestiture to the court, which had actually asserted its undoubted jurisdiction. The bankrupt, if not dead when the action in ejectment began, was at least comatose. Its title had been taken by the bankruptcy court, and, its assets being there administered, it can not be conceived, how a judgment rendered against it in such strait can estop the trustee, who takes, not by assignment pendente lite, but by operation of the law as of a time when no action was pending."

Danger lurks in the examination of title coming through bankruptcy proceedings. First, the Supreme Court of the State holds that the act of 1903 requiring the trustee to file in the office of the recorder in each county wherein the bankrupt owns lands a certified copy of the decree of bankruptcy is **directory** and not **mandatory**. If this directory act is not performed by the trustee the abstracter has no means of knowing nor has the examiner, but that title may then be vested in a trustee in bankruptcy. Second, under the case above given an adjudication may be had without the state by a bankrupt and no certified copy filed as directed under the act of 1903. The question of notice might be troublesome in the determination of the rights of purchasers, and at most a suggestion is all that is necessary in a work of this kind.

Suggested forms for the abstracters to use in making extracts from proceedings under act of 1867.

Form No. 1

IN RE ESTATE OF

_____

Bankrupt

UNITED STATES DISTRICT COURT_____ DISTRICT OF

_____

(Here write the State)

Petition filed _____

Schedule of assets and liabilities are as follows:
(Here give the lands, if such are listed, and the creditors listed.)

Adjudication entered on the_____day of_____, 18_____, and_____is appointed assignee in the above matter.

Petition of the assignee praying for an order authorizing the sale of the assets filed_____, 18_____, and an order entered authorizing said assignee to make the sale by giving publication of the same in manner following, to-wit:

(Here give the manner required in the order, whether in newspaper or otherwise.)

Report by the assignee of the sale filed_____, 18_____, with proof of publication thereto attached.

Note: Under the act of 1867 and until the amendment of 1874 the assignee in bankruptcy could make a sale without advertising the sale. The sale under the amendment of 1874 required advertisement with some degree of particularity.

Form to be used in abstracting an assignment under act of 1867.

Form No. 2

_____

REGISTER IN BANKRUPTCY OF THE DISTRICT COURT OF

THE U S. FOR_____ DISTRICT OF

_____

(Here write the State)

ASSIGNMENT BY REGISTER

Dated _____

Filed _____

Recorded _____

Here should be written the necessary recitals of the assignment so that the examiner may have a sufficient showing before him to enable him to form an opinion as to the transfer of the property.

Form No. 6

In the District Court of the United States for the_____ District of_____

In the Matter of _____ Bankrupt

In Bankruptcy

Order Appointing a Trustee

At_____, in said district, on the_____ day of_____, A. D._____, before_____, referee in bankruptcy.

This being a day appointed for the first meeting of creditors under said bankruptcy, and of which due notice had been given in the (Here insert the name of the paper in which such notice was printed), the undersigned referee of said court in bankruptcy sat at the time and place above mentioned in said notice, to take the proof of debts and for the choice of a trustee under said bankruptcy; and the creditors whose claims had been allowed were present or duly represented and failed to make a choice of a trustee of said bankrupt's estate, and I therefore appoint_____as trustee of the same.

_____
Referee in Bankruptcy.

Note: The Trustee is usually required to give a bond and the court must receive evidence of the actual value of the securities. After the appointment of the Trustee, would come the abstracting of the bond, approval of the same and the oath of the trustee as an officer of the Court. If the creditors select or agree upon the trustee, the recitals will vary from the recitals in this form, and the abstracter can conform his recitals to the record.

Form No. 7

In the District Court of the United States for the_____ District of_____

IN THE MATTER OF _____, Bankrupt.

In Bankruptcy

Petition to Sell Real Estate by Auction.

_____, Trustee of the estate of said bankrupt, represents that it would be for the benefit of the estate that the real estate of said bankrupt, to-wit: (Here describe the lands) should be sold and upon terms and conditions as follows:

(Here state any other recitals necessary.)

Dated the_____day of_____, 18_____

_____,
Trustee.

Filed_____

Form No. 8

In the District Court of the United States for the_____ District of_____

IN THE MATTER OF

_____

Bankrupt

Order of Referee Authorizing Sale

RECITES That the petition having been duly filed, came on for hearing, of which hearing ten days notice was given to creditors of said bankrupt, and after due hearing no adverse interest being represented thereat (Other recitals, if any), it is ordered that said Trustee be authorized to sell the portion of the bankrupt's estate specified in the petition, keeping an accurate account of each parcel sold, which account he shall file with referee in bankruptcy.

Note: The petition and order may relate to private sale, and if so the petition and order should be set out.

Bankrupt's title passes when:

The bankrupt's title between the filing of the petition and adjudication, under the act of 1898, remains in the bankrupt,—perhaps even to the date of the appointment and qualification of a trustee. (Rand vs. Railway Co, 16 Am. B. R. 692; Fuller vs. New York Fire Insurance Co., 185 Mass. 12.) The best authority indicates that the bankrupt is not divested of his title until the appointment and qualification of the trustee (Supra.) But after adjudication the bankrupt has no standing in court as to his property which is not exempt. (Pickens vs. Roy, 9 Am. B. R. 47 ,187 U. S. 177.)

What vests, or Interest of Trustee:

Stated broadly the rule is that the trustee takes all the property of the bankrupt, whether in possession or in action, at the time the petition was filed, but he acquires title only to that which the bankrupt had at that time. Property not then owned but acquired before the adjudication. (In re Harris, 2 Am. B. R. 359) and surely property acquired after it and before the discharge (In re Rennie, 2 Am. B. R. 182) does not vest in the trustee, but becomes the bankrupt's, clear of the claims of creditors, save those after the commencement of the proceeding or those who, for statutory reasons, are not affected by the discharge (In re West, 11 Am. B. R. 782, 128 Fed. 285.)

Subject to all claims, liens and equities:

The trustee does not take as an innocent purchaser, but subject to all the valid claims, liens and equities of the bankrupt. (Chattanooga Nat. Bank vs. Rome Iron Co., 4 Am. B. R. 441; 102 Fed. 755.) The trustee in bankruptcy stands in the shoes of the bankrupt and has no better title than he had.

Appraisers and appraisals:

The act seems to require the appointment of appraisers, but at the same time, it is not thought that this is so far jurisdictional as to make defective a title sold by a trustee without appraisal.

Sale of the property:

The present statute, after the general words, conferring jurisdiction on courts of bankruptcy to convert estates into money and distribute them, and charging this duty on the trustee limits his powers by the words, "under the direction of the court," and then provides that the same when practicable, shall be made subject to the approval of the court; and that no sale at less than 75 per cent of the appraised value shall be made with out the approval of the court.

Upon the true construction, a sale of a bankrupt's property is subject to the approval of the court when practicable, and any sale for which an approval was unquestionably practicable, conveys no title until it is confirmed. (In re Shea, 11 Am. B. R. 207, 123 Fed. 153.) The confirmation is a matter of discretion. As illustrative cases it may be said and the doctrine has been laid down that a referee has power to order and confirm a sale. (In re Matthews (D. C., Ark.), 6 Am. B. R. 96, 109 Fed. 603.)

Transfer of trustee's title to purchasers:

On report of the sale being confirmed, an order is usually entered directing the trustee to make the transfer on receipt of the consideration. The instrument of transfer should always recite what interest, as, for instance the bankrupt's or the latter's free of liens, is transferred.

Form No. 9

In the District Court of the
United States for the _____ District of _____

In re _____ Bankrupt

Discharge of Bankrupt.

Whereas, _____, of said district, has been duly adjudged a bankrupt, under the acts of Congress, relating to bankruptcy, and appears to have conformed to all the requirements of law in that behalf, it is therefore ordered by this court that said _____ be discharged from all debts and claims which are made provable by said acts against his estate, and which existed on the _____ day of _____, on which day the petition for adjudication was filed; excepting such debts as are by law excepted from the operation of a discharge in bankruptcy.

Witness the Honorable _____, judge of said District Court, and the seal thereof this the _____ day of _____, A. D. _____.

_____

Filed _____

Discharge Defined:

Under the Act of 1898 "Discharge" is defined as a release of a bankrupt from all his debts which are provable in bankruptcy, except such as are excepted by the act.

Debts not Dischargeable:

"A discharge in bankruptcy shall release a bankrupt from all his provable debts, except such as (1) are due as a tax levied by the United States, the State, county, district, or municipality in which he resides; (2) are liabilities for obtaining money by false pretense or false representation, or for willful and malicious injuries to the person or property of another, or for alimony due or to become due, or for maintenance or support of wife or child, or for seduction of an unmarried female, or for criminal conversation; (3) have not been duly scheduled in time for proof and allowance, with the name of the creditor if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy; or (4) were created by his fraud, embezzlement, misappropriation, or defalcation, while acting as an officer or in any fiduciary capacity. (Seciton 17, Bankruptcy Act of 1898.)

Nature of the Proceeding in Granting a Discharge:

In the nature of the proceeding the granting of a discharge is an adjudication between the bankrupt and all parties duly scheduled, or with notice amounting to **res adjudicata** that no other court will allow to be impeached. Beside the present law like its predecessor, declares that such discharge, "not revoked shall be evidence of jurisdiction of the court, the regularity of the proceedings, and of the fact that the order was made."

The Effect of the Discharge:

A discharge goes to the remedy; it does not cancel the debt. It destroys the remedy on all debts except those falling within the terms set out under subhead of "Debts not Dischargeable." Being a bar to the remedy, it must be pleaded. It seems, however, that a judgment entered after a petition is filed, but before the discharge, is a mere debt and the discharge can be used as a bar to proceedings to enforce it. A judgment entered after the discharge, no matter when the suit was begun, is valid even as to the discharge; by not pleading it the defendant has waived its benefits.

Revocation of Discharge and its Effect:

In general it may be said that revocation of a discharge makes the discharge a nullity, excepting as to those who have acted on the faith of it while operative.

Effect as to Surety Debts:

The discharge of the maker of the note does not affect the indorser in any way; the holder may collect the debt in its entirety from him. The same application is to be found in the principal of a bond by his discharge, or the discharge of a co-obligor. This is peculiarly so where the bond runs to the people, bankruptcy, as a rule, not affecting such liabilities. As to attachment bonds, appeals and replevins there is some disparity in judicial opinion, depending upon the nature and reading of the bond, and the jurisdiction in which such proceedings arise.

Debts not scheduled:

Jurisdiction of the creditor under the act of 1898 depends, not on the petition and adjudication, but on the facts, either that the debt was duly scheduled in time for proof and allowance, or if not that the creditor had notice or actual knowledge of the proceedings in bankruptcy. A written notice need not be served upon the creditor, but actual knowledge is sufficient, and facts occurring before or after the commencement of the proceedings are competent to establish such knowledge. (Hanover Nat. Bank vs. Moyses, 186 U .S. 181.) Where a creditor of a bankrupt has notice or actual knowledge of the bankruptcy proceeding in time to prove his claim in due course, the claim will be discharged by the bankruptcy proceeding even though the creditor was not designated as a creditor in the proceeding and his claim was not scheduled. (Perry Naval Stores Co. vs. Caswell, 63 Fla. 552, 57 So. 660.) Extreme exactness must be used in describing the creditor by name, or he will not be "duly scheduled;" the schedule of the residence of a creditor as "unknown," when it could have been ascertained by the exercise of reasonable diligence, would prevent a discharge of the debt. (Schiller vs. Weinstein, 15 Am. B. R. 699.) And the use of ditto marks to indicate residence is ineffectual. (Haack vs. Theise, 16 Am. B. R. 699.) "Actual knowledge of the proceedings" contemplated by the bankruptcy laws is a knowledge in time to avail a creditor of the benefits of the law. (Birkett vs. Columbia Bank, 195 U. S. 345.) Knowledge obtained from reading a newspaper and from verbal communication has been held to be sufficient. (Morrison vs. Vaughan, 18 Am. B. R. 704, 119 N. Y. App. Div. 184.)

Effect of revocation of discharge:

It takes from the debtor all property acquired since the adjudication and applies it to the payment of debts contracted while the composition was in force. (See Bankr. Act, Sec. 64-c.) The order setting aside also reinstates the case, and the provision is made by Section 44 of the bankruptcy act for the election of a trustee. A trustee when once elected, the case proceeds as though there had been no composition, and every one, insofar as possible to the rights and remedies existent at the time of the composition was confirmed. This, however, will not affect the sale of realty, properly made as provided for in the act.

CHAPTER THIRTY-ONE

COMPILING THE ABSTRACT

A matter of no little concern is, after all instruments have been properly abstracted, the arrangement of the various conveyances, so as to be the most effective in the display of the title, and for the convenience of the Examiner. Many good abstracters seriously impair the benefits to be derived from their work through negligent compilation.

The author prefers that the abstract be arranged so as to show each chain of title in natural sequence. It sometimes happens that there are several chains of title,—some originating from tax deeds, some from mistakes in the drafting of the instruments of conveyance, and others being a branch of the original chain conveying some particular quantity or interest.

Naturally all conveyances may be classified under two general heads or classifications: One the original chain or chains, and the other may be classified as "adverse conveyances." Under the head of adverse conveyances may be placed tax deeds and resulting conveyances which are not merged into the original chain of title. Adverse conveyances emanate from independent sources and are not connected with the original grantor in the regular course of title. After the original chain of title has been arranged, then it is well to place between the original chain and the adverse conveyances a note or page similar in form as follows:

SUGGESTED PAGE FOR ABSTRACT
"ADVERSE CONVEYANCES

The preceding pages, numbered_____to_____, both inclusive, trace title to lands described in caption from the original grantor to the grantee in whom title is found. Also, any adverse title, followed by mesne conveyances, merging into the original chain of title, is shown as a part of the original chain of title.

The succeeding pages include all conveyances and instruments emanating from independent sources and not connected with the original chain of title, nor merging into said title. These isolated adverse conveyances may have been the result of error, and they are for that reason compiled as they are, succeeding the original chain of title, where the Title Examiner can give them, the necessary consideration which to him may seem best. The succeeding pages embrace instruments describing or partially describing lands in the caption, and have been carefully abstracted in order that the title examiner may have the full benefit of any title, which tends to raise the question of outstanding interests adverse to the grantee in whom title is found in the original chain."

This arrangement makes it convenient for the examiner to give due consideration to the original chain, and at the same time the "adverse conveyances" are placed so as to invite his attention, and to give him opportunity to study them unimpeded by other matters at that time.

Let the abstracter be guided by one rule and that is that every conveyance, incumbrance, lien, charge, or other matter of whatever nature and kind should be shown affirmatively and without expression of opinion as regards the legal effect of the instruments, the intention of parties, supposed or otherwise. It is the sole duty of the abstracter to show affirmatively the record of any and all conveyances or instruments touching the title now, or which have heretofore affected it, and the duty of the Title Examiner to give legal effect to such conveyances. The abstracter can use advantageously legal education in making extracts as to what should be shown and "how" it should be given, but there it ends and the examiner's duty begins. Abstracter's notes calling attention to the effect of an instrument is not out of place and any examiner who resents such assistance is usually in need of all he can get. The point is to impress upon the abstracter the need of showing the conveyance without letting his opinion bias him to any possible omission, and there can be no error.

CHAPTER THIRTY-TWO

THE EXAMINATION OF THE ABSTRACT AND THE PREPARATION OF THE OPINION THEREFROM

An Abstract Defined:

An abstract of title embraces an epitome of the various documents which evidence title, such as deeds, wills, affidavits, mortgages, liens of all kinds, and all other matters of record affecting the title.

The Purpose of the Abstract:

The object of the abstract is to enable the owner or purchaser or his counsel for him to determine the efficiency of the title. It should therefore contain whatever concerns the source of the title and the conditions relating thereto. (Kane vs. Rippey, 22 Ore. 296, 23 Pac. Rep. 180.) Abstracters are liable for damages occasioned by mistakes and inaccuracies in the abstract. (Dickle vs. Abstract Co., 89 Tenn. 431, 14 S. W. Rep. 896; Thomas vs. Schee, 80 Ia. 237, 45 N. W. 539.)

What the Abstract Should Show:

The abstract should show not only all conveyances affecting the title back to its source, but all liens or incumbrances of record which may affect the estate or interest which the purchaser is to acquire, and in case of titles derived from judgments or decrees of courts in judicial proceedings, or from ministerial acts of officers of the government, the existence of all facts without which the proceedings or acts in questiton would be not voidable merely but absolutely void. The abstract should show the essential parts of every instrument in any manner affecting the title.

Duty to Furnish an Abstract:

In some jurisdictions the duty of the vendor to furnish an abstract has been announced. (Chapman vs. Lee, 55 Ala. 616; Carpenter vs. Brown, 6 Barb. (N. Y.) 149.) But it has been held in other jurisdictions that in the absence of an agreement obliging the vendor to furnish an abstract, no duty devolved upon the vendor to supply the purchaser with an abstract. (Easton vs. Montgomery, 90 Cal. 313, 27 Pac. Rep. 280; Bolton vs. Branch, 22 Ark. 435.) Likely the weight of authority is to the effect that in the absence of an agreement by the vendor to furnish an abstract no duty to do so is involved. (Easton vs. Montgomery, 90 Cal. 313.)

Time in which to Examine the Abstract:

In the absence of a time specified for the examination of title the purchaser is entitled to a reasonable time. The matter of what constitutes a reasonable time is one of fact in each individual case. In the case of Allen vs. Atkinson, 21 Mich. 361, Cooley, J., announced: "It would be out of all reason to insist that the vendee, at his peril, should take a title apparently incumbered, and that the vendor should have a right to demand the immediate performance of the contract by the vendee, when apparently his own deed would be insufficient to give the complete title he had agreed to convey. Nor do I think thirty days was an unreasonable time to take for the purpose when the mortgagee resided at a distance, and when it does not appear that the situation of the parties had in the meantime been changed, or that anything had occurred to render the contract less fair than when it was entered into."

Confidential Relation of Abstracter:

The relation of the abstracter to that of his client is similar to that of the attorney and client. Such person consults the evidence of ownership and becomes familiar with the chain and history of title. He handles private papers and becomes aware of whatever defects may exist, therefore, should be held to a strict responsibility. Any abuse of the trust should be met with stern rebuke. (Vallette vs. Tedens, 122 Ill., 607, 14 N. E. 52.) A county surveyor and an abstracter employed to examine title to land, for the purpose of furnishing defects in the title and also for the purpose of procuring for his employer the title to lands lying contiguous, can not acquire title to the lands for themselves. They sustain a confidential relation to the employer and such title procured by them will be treated as a trust for the employer. (Supra.)

Liability for Negligence and Ignorance:

An abstracter must use reasonable care and is responsible for a loss occasioned by his negligence. There is an implied contract to exercise reasonable care and skill in the performance of his duties and of his undertakings. (National Savings Bank vs. Ward, 100 U. S. 195; Puckett vs. Waco Abstract Co., 40 S. W. 812; Renkert vs. Title Guaranty Co., 102 Mo. 267.) He is liable if he fails to specify an incumbrance against the property. (Security, etc., Co. vs. Longacre, 56 Neb. 469.) A failure to show a judgment constitutes negligence. (Renkert vs. Title Guaranty Co., 102 Mo. App., 76 S. W. 641.) If the searcher guarantees that an abstract is a true and perfect abstract of the title he is liable in damages if he omits deeds, showing that a part of the land has been conveyed and the purchaser relies upon the abstract. Although he guarantees the abstract to be a true abstract of the record, he does not guarantee measurement. (American Trust Co. vs. Nashville Abstract So. (Tenn.), 39 S. W. 877.)

SUMMARY OF EXAMINATION

For convenience the following method of examination of the title is recommended as an aid to the memory of the examiner. This method contemplates the following analysis of approach:

(1) Defects and objections to the title which appear upon face of instruments under which it is claimed title passes.

(2) Defects and objections to title which appear from public records.

(3) Defects and objections to title arising from **matters in pais.**

While this summary is general in character it is believed that it will meet most conditions, and an outline is made for each of the three methods of approach as above given. This will enable the examiner to note his objections in going through the abstract, and to furnish the basis for his opinion in the conclusion.

Some method should be used while perusing the abstract which will enable the examiner when he has completed it to take advantage of his work. Therefore, for defects and objections which appear upon the face of instruments under which title is claimed, the following table of arrangement is suggested. It will give the nature of the defect, space for examiner's comment, and several spaces for pages of the abstract where such defects occur. This can be varied to suit individual demands.

TABLE

DEFECTS AND OBJECTIONS WHICH APPEAR UPON THE FACE OF SOME OF THE INSTRUMENTS UNDER WHICH TITLE IS CLAIMED

Defects and Objections.	Comments and Nature of Defects and Objections	Abstract Pages.							
Incompetency of parties.									
Insufficient Signing and Sealing									
Insufficient Execution.									
Insufficient words of Conveyance.									
Insufficient Description.									
Quality of the Estate Conveyed.									
Insufficient Authentication for Record.									
Charges upon Estate Conveyed, such as liens.									
Want of Statutory Recitals, such as may be required in Tax Deeds.									
Cancellations, Erasures, Interlineation and alterations, etc.									
Miscellaneous Matters.									

THE EXAMINATION OF A WILL AND DEFECTS APPARENT UPON THE FACE OF THE INSTRUMENT

"The most common defects or objections to title apparent upon the face of a will under which title is claimed would consist of restrictions, limitations or qualifications of the estate of the devisee, or some charge or incumbrance thereon. As a general rule questions which might arise as to the due execution of the will are concluded by the order admitting the will to probate. This would unquestionably be true if the probate had been resisted. Even though it had been an ex-parte proceeding it is hardly to be presumed that it would have been admitted with evidence upon its face that it was not legally executed" (Maupin on Marketable Title to Real Estate.)

Incompetency of Testator.

Incompetency of the Devisee.

Invalidity of the Devise.

Diminution of the Quantity of the Estate intended to be Conveyed.

Fraudulent Alteration and Forgeries.

Legacies Charged upon Realty.

Insufficient Signing and Attestation.

DEFECTS AND OBJECTIONS TO TITLE WHICH APPEAR FROM THE PUBLIC RECORDS OF CONVEYANCES, LIENS AND INCUMBRANCES

Prior Conveyances:

The primary object of the requirement as to registration is to protect the purchasers against secret liens and conveyances. It sometimes happens that an unrecorded conveyance may be referred to which will tend to put the purchaser upon notice.

Executory Contracts:

Executory contracts for the sale of lands are generally recorded, and when recorded will be binding upon subsequent purchasers. Notice and consideration of these can be given, such as is commensurate with the importance of the instrument.

Mortgages and Trust Deeds:

These of course, to be binding upon subsequent purchasers without notice, must be recorded.

Declarations of Trust:

A declaration of trust is a declaration in writing by one to the effect that he or she holds title in trust for certain specified purposes, or for the use and benefit of certain persons. To bind subsequent purchasers without notice it must be spread upon the records.

Defeasances:

This is a separate instrument, executed by and between the parties to an original deed, by which such instrument is to be defeated upon the happening of some event. It is sometimes used in connection with a deed absolute on its face, but given to secure an indebtedness of some kind. Defeasances must be recorded to bind subsequent parties.

Judgments:

These are the commonest forms of incumbrance on real property. In searching for judgments care should be used to see that the lien has not been continued in favor of a surety, who has discharged the judgment and who is entitled to be subrogated to the rights of the judgment creditor. Likely attention should be here called to a judgment of a Federal Court. In 1887, the Florida Supreme Court, in the case of Doyle vs. Wood, 23 Fla. 90, 1 So. 516, held that a judgment rendered by a Federal Court was a lien upon the lands of the judgment debtor anywhere within the territorial district. In 1888, Congress passed an Act which provided that judgments of Federal Courts shall be liens to the same extent and under the same conditions only as if such judgment and decree had been rendered by a court of general jurisdiction of the State. The Act of Feb. 22, 1875, provides that judgments of county courts, county judge's court, and justice of the peace court shall become a lien on the real estate of the defendant situated in any county, from the time of filing in the office of the clerk of the Circuit Court for said county a transcript of such judgment and an entry thereof in a book to be kept for that purpose. No mention is made of a judgment of a Federal Court until 1925, when by an Act of the Legislature of that year a provision is made that a Federal Court judgment shall not be binding as a lien until a certified copy of such judgment is recorded in the county wherein the land lies. **Query:** Prior to this Act was a judgment of a Federal Court a lien upon the lands of the judgment debtor in the territory comprised within the territorial jurisdiction of such court?

Lis Pendens:

The old Common Law rules have been changed by statute, and to be binding upon a subsequent purchaser notice of Lis Pendens must be filed and recorded.

Vendor's Lien:

For a vendor's lien to be binding upon subsequent purchasers, some recital is essential in the face of the instrument.

Debts of the Decedent:

These are liens upon the estate of the decedent in the hands of the heirs or devisees. In the event there is a deceased person in the title chain, necessary showing should be made that such matter has been cared for. The Statute of non-claim under the Act of 1925 is one year.

DEFECTS AND OBJECTIONS TO TITLE WHICH APPEAR UPON PUBLIC RECORDS, OTHER THAN REGISTER OF DEEDS AND JUDGMENT LIEN DOCKETS

Taxes and Assessments:

If a Tax Deed is found in the title chain it is important to enquire: (1) Whether the Tax Assessment was authorized by law; (2) whether the tax or assessment was imposed in accordance with the law; (3) whether all the requirements of the law preliminary to the sale and execution of the deed had been complied with. The first requirement is to be obtained and determined by an inspection of the law; the other two, in a measure is to be determined from an examination of the records.

Judicial Proceedings:

Here the examiner is only required to see that the Court had jurisdiction of the subject matter, of the parties, and did actually render such judgment or decree. The discussion would be indeterminable in all its ramifications and many other matters will suggest themselves at the time of examination.

DEFECTS AND OBJECTIONS TO TITLE ARISING FROM MATTERS IN PAIS, OR THOSE APPEARING UPON INQUIRY APART FROM ANY INSTRUMENT UNDER WHICH TITLE IS CLAIMED

Incompetent Parties, with Respect to Infancy, Coverture, Mental Capacity and Other Disabilities:

A deed executed by a person incompetent to convey will pass no title. An infant can pass title in Florida, but is subject to a disaffirmance upon obtaining his majority. The competency of parties can be ascertained only by enquiries in pais. It is true that these enquiries are seldom made and the risk is rather remote. A consideration shows that there is an element of risk, however careful the examiner may be.

Adverse Occupancy:

The record title can be apparently perfect and nothing to indicate a want of title in the vendor, but the purchaser is put upon enquiry and charged with notice of such occupancy.

The Occurrence of Marriage, Births and Deaths wherever they would affect the Title:

All such facts must be ascertained by inquiries in pais, and should be embodied in affidavits to be used in verifying abstracts.

Dower and Curtesy Rights:

The existence of these must be ascertained by inquiries dehors the record.

Insufficiency of the Evidence to Establish by Inheritance:

If the vendor's abstract shows title as an heir it should be sustained by affidavits of those having knowledge of the facts of inheritance. Such affidavits should show facts from which conclusions of law are made.

Insufficiency of the Evidence to Establish

Title by Adverse Possession:

If title is claimed by adverse possession there should be affidavits by credible persons showing such possession for a time sufficient to support the claim and to bar all persons including those persons under disability when the cause of action accrued. Better to have a judicial determination of the matter.

It can be seen that despite the record title there are many things **in pais** which the Examiner must take notice of in the examination of the abstract of title.

OPINION

After the Examiner has made notes according to the system outlined he is then prepared to gather from these notes and to formulate his opinion. A very satisfactory method is to make an analysis of the title or better to prepare an analytical chain or sketch map. This will give him a diagram and will enable him to use effectively the notes which he has taken in the perusal of the title, noting the defects in each conveyance. It is well to preserve the memoranda for future reference, for if the abstract should again come under his observation for examination considerable labor may thereby be avoided.

A general outline of opinion is arranged here for the benefit of the Examiner:

(1) **Caption,** which should embrace a concise statement of lands embraced in abstract of which examination is being made.

(2) **Result of examination,** which will include all defects found in the perusal of the abstract. These should be set out not only by description but by reference to abstract page.

(3) **Requisitions** should be made, if such need exists, for corrective instruments or conveyances. If these requisitions are met, then a final opinion can be given without regard to the same; otherwise, the opinion should be closed with the limitation or restriction, such as,

"This opinion is expressly subject to:
(Here set out the matter disclaimed.)

Final Suggestion:

The examiner's opinion, of course, will differ in respect to individual expression guided by the matters arising from the perusal of the abstract. Affidavits are not to be relied upon to any great extent, especially in matters constituting the basis in the determination of an opinion. It is true that by necessity they can be used in the matter of the determination of the time of death, to ascertain the surviving heirs, and other collateral information, but no further. The sole determination in passing on the validity of any instrument is whether or not it could be introduced in evidence in ejectment proceedings. If not and there are no legislative enactments by which the requirement or necessity, which the affidavit attempts to meet, meets the condition, the safe and sane plan is to seek a judicial determination. Such a proceeding will relieve the examiner of liability and will enable him to render to his client a measure of service commensurate with the responsibility of the fiduciary relationship.

APPENDICES

Appendix 1: School Lands.

Appendix 2: Railroad Lands.

Appendix 3: Sovereignty, Swamp and Overflowed Lands.

Appendix 4: Tax Laws and Matters Relating Thereto.

Appendix 5: Tables Showing State and Government Lands.

Appendix 6: Incorporation of Municipalities.

Appendix 7: Statutory Liens.

Appendix 8: Quieting Land Titles.

Appendix 9: Full Faith and Credit Clause.

Appendix 10: Suggested Forms for Abstracters.

There are certain miscellaneous matters and collateral information relating to Land Titles, not of sufficient importance in themselves to merit a place in the body of the book, but of necessity of convenience should be given a place where it may be easily found. Such is the case in the matters to follow.—Author.

APPENDIX 1

SCHOOL LANDS

Lands derived from the United States for School Purposes:

Under Act of March 3, 1845, there was granted to the State what is called the "Seminary Lands,," the proceeds of which are applied to the benefits of the University of the State of Florida, and the Florida State College for Women, and in addition to the "Seminary Lands," the same Act granted every sixteenth section in every township in the State for public school purposes, and in case of a deficiency in the sixteenth section, indemnity of the same, either in lands or cash is granted. The sixteenth section is usually spoken of as "school lands proper."

Act of March 3, 1845:

Be it enacted, etc. . . . That in consideration of the concessions made by the State of Florida in respect to the public lands, there be granted to said State eight entire sections of land for the purpose of fixing the seat of Government; also, section number sixteen, in every township, or other lands equivalent thereto, for the use of the inhabitants of such township for the support of such schools; also two entire townships of land, in addition to the townships already reserved, for the use of two seminaries of learning. One to be located east and the other west of the Suwannee River; also, five percentum of the net proceeds of the sale of lands within the State, which shall be hereafter sold by Congress, after deducting all expenses incident to the same; and which said net proceeds shall be applied by said State for the purpose of education." (Chapter 75, Act of March 3, 1845, Section 1.)

SCHOOL INDEMNITY

The United States Government allows indemnity to the State for lands disposed of by the Government. The State has received many acres by reason of the provisions for that purpose. In the various School Indemnity Lists certified by the Secretary, the loss is usually accounted for immediately opposite to the lieu selections, see Form No. 3 under head of "School Lands." The largest recovery under the provision for school indemnity was the indemnity for the sixteenth sections in the "Forbes Purchase," which was an old Spanish Grant, the title of which is recognized by the Federal Government.

The Act of February 26, 1859, relates to indemnity. Copy of said Act is as follows:

Chapter 58, Acts of Congress, February 26, 1859:

"Be it enacted ,etc., That where settlements, with a view of pre-emption, have been made before the survey of the lands in the field which shall be found to have been made on Sections Sixteen and Thirty-six, said sections shall be subject to the pre-emption claim of such settler; and if they, or either of them, shall have been or shall be reserved or pledged for the use of schools or colleges in the State or Territory in which the lands lie, other lands of like quantity are hereby appropriated in lieu of such as may be patented by pre-emptors; and other lands are also hereby appropriated to compensate deficiencies for school purposes where said Sections Sixteen or Thirty-six are fractional in quantity, or where one or both are wanting by reason of the township being fractional, or from any natural cause whatever; Provided, that the land by this section appropriated shall be selected and appropriated in accordance with the principles and adjustment and the provisions of the Act of Congress of May

20, 1826, entitled, 'An Act to appropriate lands for the support of schools in certain townships and fractional townships not before provided for.'"

Under Act of Congress of February 28, 1891, the Acts relating to indemnity for school lands were amended to read as follows:

"Chap. 384. An Act to amend Sections 2275 and 2276 of the Revised Statutes of the United States, providing for the selection of lands for educational purposes in lieu of those appropriated for other purposes.

"Be it enacted, etc., That sections Twenty-two Hundred and Seventy-five and Twenty-two Hundred and Seventy-six, of the Revised Statutes of the United States, be amended to read as follows:

"Sec. 2275. Where settlements with a view to pre-emption or homestead have been, or shall hereafter be made before the survey of lands in the field, which are found to have been made on Sections Sixteen or Thirty-six, those sections shall be subject to the claims of such settlers;

"And if such sections, or either of them, have been or shall be granted, reserved or pledged for the use of schools or colleges, in the State or Territory in which they lie, other lands of equal acreage are hereby appropriated and granted, and may be selected by said State or Territory in lieu of such as may be thus taken by pre-emption of homestead settlers.

"And other lands of equal acreage are also hereby appropriated and granted, and may be selected by said State or Territory where Sections Sixteen or Thirty-six are mineral land, or are included within any Indian, military or other reservation, or are otherwise disposed of by the United States."

Act of Congress of 1854 to vest in the several states and territories the title in fee of the lands which have been or may be certified to them.

"Where lands have been or may hereafter be granted by any law of Congress to any one of the several States or Territories, and where such law does not convey the fee simple title of the lands, or require patents to be issued therefor, the list of such lands which have been or may hereafter be certified by the Commissioner of the General Land Office, under the seal of his office, either as orignal or copies of the originals of record, shall be regarded as conveying the fee simple title of all the lands embraced in such lists that are of the character contemplated by such acts of Congress, and are not intended to be granted thereby, the lists, so far as these lands are concerned, shall be perfectly null and void, and no right, title, claim, or interest shall be conveyed thereby." (10 Stat. 346; Shepley vs. Cowan, 52 Mo. 559; August 3, 1854.)

Issue of Certified List, see Lester's Land Laws, Vol. 1, page 236, No. 249.

Other congressional acts bearing upon the subject of school lands are as follows:

Act of Congress, April 14, 1864 (Lester's Land Laws, Vol. 2, pg. 87.)

Act of Congress, July 23, 1866 (Lester's Land Laws, Vol. 2, pgs. 176.)

Act of Congress, Dec. 22, 1854 (Lester's Land Laws ,Vol. 1, pgs. 241-242. No. 262; the act being one for the confirmation of claims.

Act of Legislature, Feb. 19, 1874

Sections 24 and 25 of McClellands Digest, page 285 provides for railroads and canal companies taking possession of seminary and school lands under certain conditions.

Sec. 24. Every railroad or canal company which shall have located or constructed, or which shall hereafter locate or construct its road or canal through any seminary lands, school lands, swamp and overflowed lands owned and held by this State shall have the right to take, occupy and hold and possess for the purposes of a railroad or canal, a strip of land two hundred feet wide through or across each and every tract of land so owned or held by the State over which said railroad or canal is or shall be constructed. This section shall not be applicable to any lands that shall be sold by the State prior to the actual survey and location of any such road

or canal line, and the filing of a plat of such road or canal in the office of the Secretary of State as prescribed in this chapter.

Sec. 25. Any such railroad or canal company shall, as soon as may be after the route of its road or canal may be fixed, deposit with the Secretary of State a plat exhibiting all such lands through which the route of said road or canal shall run, and the location of such through the same, and whenever any deed shall be issued for any such lands the same shall contain an express reservation for the use of said railroad or canal company for all such lands as, according to the provision of this section, such company have a right to have, hold, occupy, use, or possess.

BOARD OF EDUCATION

Board of Education created, and duties defined:

Section 1. The Superintendent of Public Instruction, Secretary of State and Attorney-General shall constitute a body corporate, to be known as the Board of Education of Florida. The Superintendent of Public Instruction shall be President thereof. The duties of the Board of Education shall be prescribed by the Legislature.

Section 2. The Board of Education shall consist of the Superintendent of Public Instruction, Secretary of State and Attorney-General. The Superintendent of Public Instruction shall be the President, and the State Treasurer the Treasurer of the Board. It is a corporate body, with full power to perform all corporate acts for educational purposes.

Section 3. It is the duty of the Board of Education, and they are hereby directed and empowered—

To obtain possession of and take the charge, oversight and management of all lands granted to, or held by the State for educational purposes, and to fix the terms of sale, rental or use of such lands, and to do whatever may be necessary to preserve them from trespass or injury, and for their improvement. Sect. 9, Art 8, Const. of 1868. Section 10, Chapter 1686, Act of January 30, 1869.)

SCHOOL LANDS

According to the Eighteenth Bienial Report of the Department of Agriculture, Tallahassee, Florida, concerning school lands and seminary lands, there was granted to the State under the Acts of March 3, 1845, February 26, 1859, and February 28, 1891, the following number of acres:

Total granted, approximated, 1,000,000 Acres.

Total on hand, January 1, 1925, (approximated) 201,918.58 Acres.

Of this amount on hand the approximation as to acreage surveyed and unsurveyed was given as follows:

Surveyed	42,187.10	
Unsurveyed	159,731.48	
Total	201,918.58	Estimated.

SEMINARY LANDS

Total acreage originally granted	92,160.00	Acres
Balance on hand, January 1, 1925	40.06	Acres

APPENDIX TWO

RAILROAD LANDS AND INFORMATION

Certificates as to Completions of Railroads:

A certified copy of the Map of that portion of railroad from Waldo through Plant City to the terminus at Tampa Bay in Section 24, Tp. 29 S, R. 18 E., being the completion of the authorized line upon which the certificate of Governor Fleming executed on April 19, 1890, to the effect that the Map:

> "Show that portion of said railroad beginning at Waldo, in Section 23, T 8 S, R 21 E., and ending at the waters of Tampa Bay in Sec. 24, T. 29 S., R. 18 E., which has been completed and equipped as required by the Act of Congress approved May 17, 1856."

This railroad will effect certain counties in the State, and is not of general importance. The ranges and townships included in the Map are: Ranges 18 to 25, both inclusive, and Townships 8 to 31, both inclusive. A certified copy of this Map may be secured from the Commissioner of the General Land Office for the sum of $1.85.

Also, certificates of completions of other railroads, beneficiaries under the Act, approved May 17, 1856, may be secured from the Commissioner of the General Land Office as follows:

A certified copy of the map showing the line of constructed road from Pensacola to Alabama State line, Alabama and Florida Railroad, and certified copy of the certificate of the Governor of Florida to the effect that the road was completed and equipped as required by the Act of May 17, 1856 (11 Stat., 15), executed on September 1, 1874, will be furnished by the Commissioner of General Land Office for $1.10.

Also, a certified copy of the Map with the certificate of the Governor thereon executed on March 11, 1878, showing the line of the Alabama and Florida Railroad from the State line to Montgomery will be furnished by the Department for seventy-five cents.

Certified copies of the certificates of the Governor of Florida as to the completion and equipment of two twenty mile sections of the Pensacola and Atlantic Railroad in Florida, formerly Pensacola and Georgia Railroad, executed on December 6, 1882, will be furnished by the Department for eighty-five cents.
Certified copy of the Map showing the line of constructed road of the Pensacola and Atlantic Railroad as constructed from Pensacola to a point on the Apalachicola River in Southwest Quarter of Section 5, T 3 N., R 6 W, Tal. M., 161 miles, together with a certified copy of certificate of the Governor as to the completion and equipment, executed on July 19, 1883, will be furnished by the Department for the sum of $1.65.

A certified copy of the certificate of the Governor of Florida executed July 19, 1883, as to the completion and equipment of the line of the Pensacola and Atlantic Railroad west from Jacksonville, office file 1884-7946 will be furnished by the Department for the sum of $1.00.

In writing to the Commissioner of the General Land Office, at Washington about any railroad matters, reference should be made to Bureau "F."

CERTIFICATE OF COMPLETION OF RAILROADS

In order that abstracters and examiners may have full benefit of the information that these certificates afford, which are referred to in the preceding paragraphs, they are given in full. The matter of duplication is for the purpose of affording the information in brief or in full to meet the needs of the reader.

DEPARTMENT OF THE INTERIOR

General Land Office

Washington, Sept. 28, 1926

I hereby certify that the annexed copy of map and certificates attached thereto relating to completion and equipping of a portion of lines of railroad authorized by the Act of May 17, 1856 (11 Stat., 15), is a true and literal exemplification of the original on file in this office.

In Testimony Whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written

Thos. C. Havell,

Assistant Commissioner of the General Land Office.

(SEAL)

Executive Office

Tallahassee, Florida

I, Francis P. Fleming, Governor of the State of Florida, do hereby certify that this is a true and correct copy of the Map or Plat of the route of the Florida Central and Peninsular Railroad, duly filed in my office by H. Rieman Duval, President of the Florida Central and Peninsular Railroad, which shows that portion of said Railroad, beginning at Waldo in Section Twenty-three, Township Eight, South, of Range Twenty-one, East, and ending at the waters of Tampa Bay in Section Twenty-four, Township Twenty-nine, South, of Range Eighteen, East, a distance of 155.33 miles which has been completed and equipped as required by the Act of Congress approved May 17, 1856, entitled, "An Act granting public lands in alternate sections to the States of Florida and Alabama to aid in the construction of certain Railroads in said States," and of the Act of the Legislative Assembly of the State of Florida, approved January 6, 1855, entitled, "An Act to provide for and encourage a liberal system of Internal Improvement in this State," granting lands to said Railroad Company.

In testimony whereof I have hereunto set my hand and caused to be affixed the Great Seal of the State of Florida at the Capitol in the City of Tallahassee, this the 19th day of April, 1890.

Francis P. Fleming, Governor.

(SEAL)

Attest

Jno. L. Crawford,
Secretary of State.

State of Florida,
County of Leon, ss.

I, John Bradford, State Engineer of the State of Florida, do hereby

certify that I have examined that portion of the Main Line of the Railroad from Amelia Island, on the Atlantic, to the waters of Tampa Bay, in South Florida, which lies south of the point of divergence of the Branch to Cedar Keys now constructed; that the line of constructed road starts from said point of divergence in the Town of Waldo in Section Twenty-three, Township Eight, South, of Range Twenty-one, East, and extends to the waters of Tampa Bay in Section Twenty-four, Township Twenty-nine, South, of Range Eighteen, East, a distance of 155.33 miles; that the above plat is correct and shows the true line of construction and gives the entire and exact length of the constructed line, also that the said railroad has been constructed and equipped as required by Congress in the Act approved May 17, 1856, and by the Act of the Legislature of Florida of January 6, 1855, and the Acts amendatory thereto, and is owned and operated by the Florida Central and Peninsular Railroad Company.

Jno. Bradford,
State Engineer.

Sworn to and subscribed this the 17th day of April, 1890, before me.

A G. McDonell,

(Seal) Notary Public.

Jacksonville, Florida

April 14, 1890

It is hereby certified that John W. Bushnell is the Chief Engineer of the Florida Central and Peninsular Railroad Company and that the location of the railroad as represented on the Map is correct and approved by the Company, and also that the said portion of the said railroad has been completed and equipped in all respects as required by law.

H. Rieman Duval,
President of the Florida Central and Peninsular Railroad Co.

Sworn to and subscribed before me this the day and year above written.

C. S. Beerbower,
(Seal) Notary Public for State at Large.

State of Florida,

County of Duval, ss.

John W. Bushnell, of Jacksonville, in said County and State, being duly sworn, deposeth and says that he is the chief Engineer of the Railroad from Waldo (Sec. 23, Tp. 8 S, R 21 E) to the waters of Tampa Bay (Sec. 24, Tp. 29, S, R 18 E.), a distance of 155.33 miles, exclusive of sidings and branch lines as shown by the line of route in connection with the lines of public surveys on this map and that it has been completed and equipped as required by law and that this line of route shows the correct location of said Railroad as constructed.

J. W Bushnell, Chief Engineer,
Florida Central and Peninsular Railroad Company.

Sworn to and subscribed this the 11th day of April, 1890, before me.

C. S. Beerbower,
(Seal) Notary Public, State of Florida at Large.

Note: A certified photostatic copy of the Map referred to in the various certificates can be secured from the Commissioner of the General Land Office, at Washington, for the sum of $1.85. The map shows not only the location of the railroad but shows sections, townships and ranges.

DEPARTMENT OF THE INTERIOR

General Land Office

Washington, Nov. 19, 1926

I hereby certify that the annexed copy of the Map and certificate appended thereto relating to completion and equipping of a portion of the lines of railroad authorized by the Act of May 17, 1856 (11 Stat., 15) is a true and literal exemplification of the original on file in this office.

In Testimony Whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

Thos. C. Havell,

Assistant Commissioner of the General Land Office.

(SEAL)

THE ALABAMA AND FLORIDA RAILROAD

I, George S. Houston, Governor of the State of Alabama, do hereby certify that this Plat or Map of the Alabama and Florida Railroad has been duly filed in my office by the said Railroad Company and shows that the said railroad, commencing at Montgomery, in the State of Alabama, and ending at the State line a point on the boundary line between the States of Alabama and Florida, has been completed and equipped as required by the Act of Congress, approved May 17, 1856, and the Act of the Legislative Assembly of the State of Alabama, approved December 19, 1857, entitled, "An Act to accept a grant of lands to the State of Alabama and to carry into execution the trust conferred upon the State of Alabama by an Act of Congress entitled, "An Act granting public lands in alternate sections to the States of Alabama and Florida to aid in the construction of certain railroads in said States, approved 17th May, 1856," granting lands to said Railroad Company, and I do further certify that said railroad was completed and equipped as aforesaid within the period prescribed by said Act of Congress approved May 17, 1856.

In Testimony Whereof, I have hereunto set my hand and caused to be affixed the Great Seal of the State.

Done at Montgomery this the eleventh day of March, A. D. 1878

Attest: R. K. Boyd, Secretary of State.

Geo. S. Houston,

Governor.

(SEAL)

Note: The Map referred to in the certificate showing the location of the railroad, sections, townships and ranges through which it passes, a certified photographic copy may be secured from the Commissioner of the General Land Office, Washington City, for the sum of seventy-five cents.—Author.

DEPARTMENT OF THE INTERIOR

General Land Office

Washington, Nov. 19, 1926

I hereby certify that the annexed copy of map and certificates appended thereto relating to the completion and equipping of a portion of the lines of railroad authorized by the Act of May 17, 1856 (11 Stat., 15) is a true and literal exemplification of the original on file in this office.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

Thos. C. Havell,
Assistant Commissioner of the General Land Office.

(SEAL)

State of Florida,

County of Escambia, SS.

Colin A. Davies, Chief Engineer of the Pensacola and Atlantic Railroad, in said county and State, being duly sworn, deposes and says that he is the chief engineer of the said railroad from a point in Township Two, South, of Range Thirty, West, at the City of Pensacola, Escambia County, Florida, to a point in the Southwest Quarter of Section Five, Township Three, North, of Range Six, West, about two miles south of the village of Chattahoochee, on the east side of Apalachicola River, in Gadsden County, Florida, the same being the entire length of said Railroad and being one hundred and sixty-one miles long, as shown by the line of route in connection with the lines of the public surveys on this map; that it has been completed and equipped as required by law and that the line of route shows the correct location of said railroad.

Colin A. Davies (Seal), Chief Engineer.

Sworn and subscribed to this the 19th day of July, A D. 1883, before me.

R. M. Cary, Jr., (Seal)
Notary Public.

It is hereby certified that Colin A. Davies is the Chief Engineer of the Pensacola and Atlantic Railroad Company and that the location of railroad as represented on this map is correct and approved by the Company and also that the entire line of said road has been completed and equipped in all respects as required by law.

M. H. Smith,
President of the Pensacola and Atlantic Railroad Company.

Attest:

R. M. Cary, Jr., Secretary.

State of Florida

Executive Office

I, William D. Bloxham, Governor of the State of Florida, do hereby certify that this plat or map of the Pensacola and Atlantic Railroad has been duly filed in the office of the Commissioner of Lands and Immigration of the State of Florida by the said Pensacola and Atlantic Railroad Company and shows that the entire length of said Railroad, commencing

in Township Two, South, of Range Thirty, West, at the City of Pensacola, Escambia County, Florida, and ending at a point in the Southwest Quarter of Section Five, Township Three, North, of Range Six, West, about two miles south of the village of Chattahoochee, in Gadsden County, Florida, which has been completed and equipped as required by the Act of Congress approved May 17, 1856, and the Act of the Legislature of the State of Florida approved March 4, 1881, entitled an Act to incorporate the Pensacola and Atlantic Railroad Company and to grant certain lands to the same, granting lands to the said railroad company.

In Testimony Whereof I have hereunto set my hand and caused to be affixed the Great Seal of the State of Florida. Done at Tallahassee this the 26th day of July, A. D. 1883

(Seal) W. D. Bloxham, Governor.

Attest:

Jno. L. Crawford,

Secretary of State.

Note: A photostat of this map may be secured from the General Land Office, at Washington, for a nominal sum, $1.65.

This map shows the location of the Railroad with reference to sections, townships and ranges.

DEPARTMENT OF THE INTERIOR

General Land Office

Washington, Nov. 19, 1926

I hereby certify that the annexed copy of map and certificates appended thereto relating to completion and equipping of a portion of the lines of railroad authorized by the Act of May 17, 1856 (11 Stat., 15) is a true and literal exemplification of the original on file in this office.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

Thos. C. Havell,

Assistant Commissioner of the General Land Office.

(SEAL)

State of Florida

City of Tallahassee

Executive Office

September 1, 1874

I, Marcellus L. Stearns, Governor of the State of Florida, do hereby certify that this plot or map of the Alabama and Florida Railroad of Florida has been duly filed in my office and shows the location of said Railroad commencing at Pensacola on the waters of the Bay of Pensacola, in the State of Florida, and ending at the State line of Alabama in the direction of Montgomery, in the State of Alabama, which has been completed and equipped as required by the Act of Congress approved May 17, 1856, and the Act of the Legislative Assembly of the State of Florida approved December 23, 1856, entitled An Act granting to Trustees for the benefit of the Alabama Railroad Company lands granted to the State of

Florida by the Congress of the United States for the purpose of aiding in the construction of a Railroad from Pensacola to the State line of Alabama in the direction of Montgomery and also an Act entitled An Act to accept of the grant and carry into execution the trust conferred upon the State of Florida by an Act of Congress entitled "An Act granting public lands in alternate sections to the States of Florida and Alabama to aid in the construction of certain railroads in said States," approved May 17, 1856.

In Testimony Whereof I have hereunto set my hand and caused to be affixed the Great Seal of the State of Florida. Done at Tallahassee, the Capital, this the 1st day of September, A. D. 1874.

(Great Seal of State) M. S. Stearns, Governor.

Attest:

Sam B. McLin, Secretary of State.

Pensacola, Florida

June 29, 1874

This is to certify the Map to which this certificate is attached is a correct exhibit of the location of the Alabama and Florida Railroad of Florida as located in the year 1856, and built during that and the years of 1857, 1858, 1859, and 1860, a portion of the time under my immediate supervision.

Signed: Wm. F. Lee, C. E.,
Late Eng. Ala. and Fla. R R.
Eng. P. & L. R. R. Co.

Note: A photostatic copy of this map, showing the route, lands granted to the State under Act of May 17, 1856, and of lands granted by the State under Act of the Legislature, December 31, 1858, can be secured from the Commissioner of the General Land Office for $1.10.

DEPARTMENT OF THE INTERIOR

General Land Office

November 19th, 1926.

I hereby certify that the annexed copies of certificates of the Governor of Florida of the completion and equipping of portions of the line of railroad authorized by the Act of May 17, 1856 (11 Stat., 15) are true and literal exemplifications of the originals on file in this office.

In Testimony Whereof I have hereunto subscribed my name and caused the seal of the office to be affixed the day and year above written.

Thomas C. Havell,

Assistant Commissioner of the General Land Office.

(SEAL)

Executive Office

Tallahassee, Florida

To the Honorable Secretary of the

Interior of the United States,

Washington, D. C.

I have the honor to certify that twenty miles of railroad commencing in Walton County, Florida, at a point sixty miles east of a connection with the Alabama and Florida Railroad, now the Pensacola Railroad, and running eastwardly towards Chattahoochee, on the Apalachicola River, the same being a part of the line of railroad designated in the Act of Congress approved May 17, 1856, entitled an Act granting public lands in alternate sections to the States of Florida and Alabama to aid in the construction of certain railroads in said States to run from the St. John's River at Jacksonville to the waters of Escambia Bay at or near Pensacola are completed, and that the said twenty miles of railroad are owned and operated by the Pensacola and Atlantic Railroad Company, a corporation duly incorporated under the laws of the State of Florida and entitled to receive all the benefits given by the said Act of Congress approved May 17, 1856, and that William D. Chipley, Vice-President of the Pensacola and Atlantic Railroad Company, is the proper person to apply for and to receive the lands so granted by said act of Congress.

In testimony whereof I have hereunto set my hand and caused the Great Seal of the State of Florida to be hereunto affixed at the Capitol this the sixth day of December, in the year of our Lord one thousand eight hundred and eighty-two.

(Seal) W. D. Bloxham, Governor

Attest:

Jno. B. Crawford, Secretary of State.

Executive Office

Tallahassee, Florida

To the Honorable Secretary of the

Interior of the United States,

Washington, D. C.

I have the honor to certify that twenty miles of railroad commencing on the east bank of the Choctawhatchee River, in Washington County, Florida, and running eastwardly toward Chattahoochee, on the Apalachicola River, the same being a part of the line of railroad designated in the Act of Congress approved May 17, 1856, entitled "An Act granting public lands in alternate sections to the States of Florida and Alabama to aid in the construction of certain railroads in said States," to run from St. John's River at Jacksonville to the waters of Escambia Bay, at or near Pensacola, are completed and that the said twenty miles of railroad are owned and operated by the Pensacola and Atlantic Railroad Company, a corporation duly incorporated under the laws of the State of Florida and entitled to receive all the benefits given by said Act of Congress

approved May 17, 1856, and that William D. Chipley, Vice-President of the Pensacola and Atlantic Railroad Company, is the proper person to apply for and receive the land so granted by the said Act of Congress.

In testimony whereof I have hereunto set my hand and caused the Great Seal of the State of Florida to be hereunto affixed at the capitol, this the sixth day of December, in the year of our Lord one thousand eight hundred and eighty-two.

(SEAL) W. D. Bloxham, Governor.

Attest:

Secretary of State, John L. Crawford.

DEPARTMENT OF THE INTERIOR

General Land Office

Washington, Nov. 19, 1926

I hereby certify that the annexed copy of certificates of the Governor of Florida of the completion and equipping of a portion of the lines of railroad authorized by the Act of May 17, 1856 (11 Stat., 15) is a true and literal exemplification of the original on file in this office.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

Thomas C. Havell,

Assistant Commissioner of the General Land Office.

(Seal of the General Land Office)

Executive Office
Tallahassee, Florida

To the Honorable Secretary of the Interior

of the United States,

Washington, D. C.

I have the honor to certify that the first twenty miles section of a railroad, commencing on the waters of Escambia Bay, in Township Two, South, of Range Thirty, West, at the City of Pensacola, in Escambia County, Florida, and extending eastward to a point in Section Three, Township One, North, of Range Twenty-eight, West. Also that the second section of twenty miles of railroad, commencing at the last mentioned point and extending eastward to a point in Section Thirty-four, Township Three, North, of Range Twenty-five, West, were completed August the 28th, 1882, and that the third section of twenty miles of the same railroad, commencing in Section Thirty-four, Township Three, North, of Range Twenty-five, West, and extending eastward to a point in Section Fifteen, Township Three, North, of Range Twenty-two, West, was completed October 6, 1882; and that the fourth section of twenty miles of

the same railroad, commencing on the west bank of the Apalachicola River at a point in Section Six, Township Three, North, of Range Six, West, and extending westward to a point in Section Twenty-four, Township Four, North, of Range Ten, West, was also completed October 6, 1882, and that the fifth section of twenty miles of the same railroad, commencing at a point in Section Fifteen, Township Three, North, of Range Twenty-two, West, and extending eastwardly and ending in Section Thirty-five, Township Three, North, of Range Nineteen, West, was completed November 30, 1882, and that the sixth section of twenty miles of the same railroad, commencing on the Choctawhatchee River, in Section Three, Township Four, North, of Range Sixteen, West, and extending eastward to Section One, Township Four, North, of Range Thirteen, West, was also completed November 30, 1882; and that the seventh section of twenty miles of the same railroad, commencing in Section Thirty-five, Township Three, North, of Range Nineteen, West, and extending east to the Choctawhatchee River at a point in Section Three, Township Four, North, of Range Sixteen, West, was completed March 20, 1883; and that the eighth section of twenty miles of the same railroad, commencing in Section One, Township Four, North, of Range Thirteen, West, and extending eastward to Section Twenty-four Township Four, North, of Range Ten, West, was completed March 20, 1883; and that the fractional part of the ninth section of the same railroad, commencing on the west bank of the Apalachicola River, in Section Six, Township Three, North, of Range Six, West, and ending at a point two miles south of the village of Chattahoochee, in Gadsden County, in the Southwest Quarter of Section Five, Township Three, North, of Range Six, West, was completed April 11, 1883; and I further certify that the entire line of railroad commencing at the City of Pensacola, on Escambia Bay, in Township Two, South, of Range Thirty, West, and ending at a point in Gadsden County, in the Southwest Quarter of Section Five, Township Three, North, of Range Six, West, as embraced in the above mentioned eight sections of twenty miles each and fractional ninth section of a mile was completed April 11, 1883, the same being a part of the line of railroad designated in the Act of Congress approved May 17, 1856, entitled an "Act granting public lands in alternate sections to the States of Florida and Alabama to aid in the construction of certain railroads in said States," to run from St. John's River at Jacksonville to the waters of Escambia Bay at or near the City of Pensacola, and I further certify that this railroad completes the line of road from St. John's River at Jacksonville to the waters of Escambia Bay, aggregating a distance of three hundred and sixty-four miles, one hundred and sixty-one miles of railroad being the line above certified to lying west of the connection of the Florida Central and Western Railroad, and extending to the waters of Escambia Bay and two hundred and three miles of said railroad extending from this connection via Quincy, Tallahassee and Live Oak to Jacksonville on the St. John's River,—the line of railroad from Jacksonville to Quincy was completed about the year 1862, and the railroad from Quincy to the Apalachicola River was completed sometime in the year 1873, and I also certify that the one hundred and sixty-one miles of railroad certified above in sections of twenty miles each are owned and operated by the Pensacola and Atlantic Railroad Company, a corporation incorporated under the laws of the State of Florida by an Act of the Legislature, approved March 4, 1881, entitled an Act to incorporate the Pensacola and Atlantic Railroad Company and to grant certain lands to the same; and entitled to receive all the benefits given by said Act of Congress approved May 17, 1856.

And that William D. Chipley, Vice-President of said Pensacola and Atlantic Railroad Company, is the proper person to apply for and to receive the lands so granted by said Act of Congress.

In testimony whereof I have hereunto set my hand and caused the

Great Seal of the State of Florida to be hereunto affixed at the Capitol, this the 19th day of July, in the year of our Lord one thousand eight hundred and eighty--three.

(Great Seal) W. D. Bloxham, Governor.

Attest:

Jno. L. Crawford, Secretary of State.

These certificates, together with the ones given in Chapter on Railroad Lands, constitutes all the certificates as to completions under the Act of May 17, 1856.

THE CONFIRMATORY ACT OF THE GENERAL ASSEMBLY OF 1899

For the further purpose of confirming titles to the various grantees under the Act of May 17, 1856, and the act of the Legislature, approved January 6, 1855, the following act was passed:

Certain grant of lands confirmed:

The State of Florida does hereby grant and confirm to purchasers, grantees and assigns of the several railroad companies which accepted the provisions of the Act entitled, An Act to provide for and encourage a liberal system of internal improvements in this State," approved January 6, 1855, and their assigns, the lands and titles thereto which were granted to the State of Florida by the United States of America to aid in the construction of certain railroads in the State of Florida, by act of Congress, approved May 17, 1856, which said land has been selected and located for the several railroad companies accepting the provisions of said Act along the line of their respective roads, to the extent and proportion to which they severally became entitled under said Act to provide for and encourage a liberal system of internal improvements in this State and the Act of Congress granting the same above referred to. And to confirm and convey the title to any lands which may hereafter be selected and approved to the State of Florida for the use of the several railroads as aforesaid, to the purchasers, grantees and assigns of said railroads (Acts 1899, Sect. 3821 R. G. S. F.)

The following railroads were beneficiaries under State aid as given by the tables to follow. These tables were taken from the Eighteenth Biennial Report of the Department of Agriculture, at Tallahassee, Florida.

STATEMENT SHOWING RAILROADS WHICH RECEIVED NO DEEDS TO SWAMP AND OVERFLOWED LANDS, EXCEPT IN ALTERNATE SECTIONS IN 6 AND 20-MILE LIMITS, TO JANUARY 1, 1925

Name of Railroad.	Acres.
Alabama and Florida (from Pensacola to Alabama line)	27,613.32
East Florida Railway Company (Jacksonville to St. Mary's River)	15,731.29
Fernandina and Jacksonville Railway Company	23,649.98
Florida, Atlantic and Gulf Central (Jacksonville to Lake City)	164,568.21
Florida Railroad (Fernandina to Cedar Keys and from Waldo to Tampa)	505,144.14
Florida Midland Railway Company	12,856.79
Green Cove Springs and Melrose Railway Company	7,781.48
Jacksonville, Mayport, Pablo Railroad and Navigation Company	10,837.88

Jacksonville, St. Augustine and Halifax River Railroad Company	56,782.15
Jacksonville and Atlantic Railroad Company	21,501.62
Live Oak and Rowland Bluff Railroad Company	3,253.21
Orange Belt Railway Company	88,687.92
Pensacola and Georgia Railroad (Lake City to Tallahassee)	65,561.77
St. Johns and Lake Eustis Railroad	14,725.90
Sanford and Indian River Railroad Company	6,192.88
St. Johns and Halifax Railroad, changed to St. Johns and Halifax River Railroad Company	110,398.58
St. Augustine and Palatka Railway Company	41,510.29
St. Johns Railway Company	42,315.16
Tavares, Orlando and Atlantic Railroad Company	4,002.44
Western Railway of Florida (lands not re-conveyed)	2,840.00
Total	1,225,955.01

RECAPITULATION OF ALL SWAMP AND OVERFLOWED LANDS

CONVEYED TO RAILROADS TO JANUARY 1, 1925

Name of Railroad.	Acres.
Alabama and Florida (from Pensacola to Alabama line)	27,613.32
East Florida Railway Company (Jacksonville to St. Mary's River)	15,731.29
Fernandina and Jacksonville Railway Company	23,649.98
Florida, Atlantic and Gulf Central (Jacksonville to Lake City)	164,568.21
Florida Railroad (Fernandina to Cedar Key, and from Waldo to Tampa)	505,144.14
Florida Midland Railway Company	12,856.79
Green Cove Springs and Melrose Railway Company	7,781.48
Jacksonville, St. Augustine and Halifax River Railroad Company	56,782.15
Jacksonville and Atlantic Railroad Company	21,501.62
Jacksonville, Mayport, Pablo Railway and Navigation Company	10,837.88
Live Oak and Rowlands Bluff Railroad Company	3,253.21
Orange Belt Railway Company	88,687.92
Pensacola and Georgia Railroad (Lake City to Tallahassee)	65,561.77
St. Johns and Lake Eustis Railroad	14,725.90
Sanford and Indian River Railroad Company	6,192.88
St. Johns and Halifax Railroad, changed to St. Johns and Halifax River Railroad Company	110,398.58
St. Augustine and Palatka Railway Company	41,510.29
St. Johns Railway Company	42,315.16
Tavares, Orlando and Atlantic Railroad Company	4,002.44
Western Railway of Florida (land not reconveyed)	2,840.00
Florida Southern Railway, formerly Gainesville, Ocala and Charlotte Harbor Railroad	2,655,482.68
Jacksonville, Tampa and Key West Railway, formerly Tampa, Peace Creek and St. Johns River Railroad	1,474,129.30
Silver Springs, Ocala and Gulf Railroad	363,600.29

Pensacola and Atlantic Railroad	2,214,024.37
Palatka and Indian River Railway	479,571.84
Carrabelle, Tallahassee and Georgia Railroad, formerly Augusta, Tallahassee and Gulf Railroad; formerly Thomasville, Tallahassee and Gulf Railroad	206,370.30
Blue Springs, Orange City and Atlantic Railroad	118,498.99
South Florida Railroad (from Sanford to Kissimmee)	72,428.55
Florida East Coast Railway	260,007.34
Total	9,070,068.67

Note—In conveyance to Florida Railroad there are embraced 23,273.58 acres of Internal Improvement lands proper.

EAST FLORIDA RAILROAD COMPANY:

East Florida Railroad Co. chartered February 10, 1880, to construct and to operate a road from Jacksonville, Duval county, Florida, to Calico Hill, on St. Mary's River, in Nassau county, Florida.

Grant of Lands to Aid in Construction:

Under Act of March 4, 1881, there was granted to said railroad alternate sections under Act of September 28, 1850, as follows:

". . . Be it enacted that the State of Florida hereby grants to the East Florida Railroad Company, under Act of Congress of September 28, 1850, the alternate sections lying on each side and within the six miles of railroad" . . (Section 1, page 1005 of McClelland's Digest.) "Upon the completion of said railroad the title to said alternate sections above granted shall vest in said company, and a deed therefor shall be issued by the Trustees of the Internal Improvement Fund." (Ibid.)

Suppletory Grant:

Section 2 of said Act provides that in case of an insufficiency of such lands lying along and within the distance aforesaid of said road, in that event the deficit shall be located elsewhere nearest and within fifteen miles of said railroad in alternate sections, and the same are hereby granted to the East Florida Railroad Company . . . . (Page 1005 of McClelland's Digest.)

Beneficiary under Swamp Land Act:

According to the Eighteenth Biennial Report of the Commissioner of Agriculture of Florida, page 20, the East Florida Railroad Company received 15,731.29 acres for which it received no deeds to swamp and overflowed lands, except in alternate sections in 6 and 20 miles limits, to January 1, 1925. Furthermore the 15,731.29 acres constituted all the swamp and overflowed lands to and including that date, which had been received by said company.

Change of Name:

Name changed from the East Florida Railroad Company to Savannah, Florida and Western Railway Co., March 12, 1884. On the following May 28, 1884, a consolidation was brought about to include the following:

Waycross and Florida Railroad Co. (Georgia).
The East Florida Railroad Co. (Florida).
The Live Oak and Rowland Bluff Railroad Co. (Florida).
The Live Oak, Tampa and Charlotte Harbor Railway Co. (Florida).

The Chattahoochee and East Pass Railway Co. (Florida).

Under the above consolidation was included all stock and the roads were operated under the name of the SAVANNAH, FLORIDA AND WESTERN RAILWAY COMPANY. The Savannah, Florida and Western Railway Co., October 12, 1901, consolidated under the above name and charter the following railways:

Ashley River Railroad Company.
Green Pond, Walterville and Branchville Railroad Co.
Southwestern and Alabama Railway Co.

Under date of July 12, 1901, the Savannah, Florida and Western Railway Co. consolidated under its name the following railroads:

Charleston and Savannah Railway Co.
Brunswick and Western Railway Co.
Alabama Midland Railway Co.
Silver Springs, Ocala and Gulf Railroad Co.
Tampa and Thonotassa Railroad Company.

On May 13, 1902, the Savannah, Florida and Western Railroad Co. consolidated with the Atlantic Coast Line Railroad Co. under the name THE ATLANTIC COAST LINE RAILROAD COMPANY.

Up to January 1, 1925, the railway companies which entered into the consolidation were beneficiaries as follows:

East Florida Railway Co. (Jacksonville to St. Mary's River..... 15,731.29 A
Live Oak and Rowlands Bluff Railroad Co..... 3,253.21
Silver Springs, Ocala, and Gulf Railroad 363,600.29

Note: For other charters to the various railroads, amendments, mergers and consolidations, the information can be obtained from the office of the Secretary of State, at Tallahassee.

APPENDIX THREE

SOVEREIGNTY, SWAMP AND OVERFLOWED LANDS

All tidal lands and water bottoms in Florida vested in the State of Florida under its sovereign rights when admitted into the Union on March 3, 1845.

Under Sections 1056, 1057, 1061 and 1062, Revised General Statutes of Florida, and Chapter 7861 and 7891, Acts of 1919, all such lands were vested in the Trustees of the Internal Improvement Fund of Florida with full power to sell the same. These submerged lands are unsurveyed, and as each tract must be examined and accurately located, before a price can be fixed for such lands, it devolves a great labor upon the Board. Many of the State lands in the Everglades have been divided and are being sold upon terms fixed by the Board.

Following are copies of the several Acts of Congress granting the different classes of lands to the State of Florida, with explanations in regard to same:

SWAMP AND OVERFLOWED LANDS

Chapter LXXXVI, Act of September 28, 1850. Be it enacted, etc.:

"That to enable the State of Arkansas to construct the necessary levees and drains to reclaim the swamp and overflowed lands therein, the whole of those swamp and overflowed lands therein, made unfit thereby for cultivation which shall remain unsold at the passage of this Act shall be, and the same are hereby, granted to said State.

Sec. 2 And be it further enacted, That it shall be the duty of the Secretary of the Interior, as soon as may be practicable after the passage of this Act, to make out an accurate list and plats of the lands described as aforesaid, and transmit the same to the Governor of the State of Arkansas, and, at the request of said Governor, cause a patent to be issued to the State therefor; and on that patent the fee simple to said lands shall vest in the said State of Arkansas, subject to the disposal of the Legislature thereof: Provided, however, That the proceeds of said lands, whether from sale or by direct appropriation in kind, shall be applied, exclusively, as far as necessary, to the purpose of reclaiming said lands by means of the levees and drains aforesaid.

"Sec. 3. And be it further enacted, That in making out a list and plats of the lands aforesaid, all legal subdivisions, the greater part of which is 'wet and unfit for cultivation,' shall be included in said list and plats; but when the greater part of a subdivision is not of that character, the whole of it shall be excluded therefrom .

"Sec. 4. And be it further enacted, That the provisions of this Act be extended to, and their benefits be conferred upon each of the States of the Union in which such swamp and overflowed lands, known and designated as aforesaid, may be situated."

See Acts of Congress March 2, 1855, and March 3, 1857 (Act of 1857 continues in force Act of 1855). Sec. 2, Act of March 2, 1855: "Sec. 2. And be it further enacted that upon due proof, by the authorized agent of the State or States, before the Commissioner of the General Land Office, that any of the lands purchased were swamp lands within the true intent and meaning of the Act aforesaid, the purchase money shall be paid over to said State or States; and where the lands have been located by warrant or script the said State or States shall be authorized to locate a quantity of like amount, upon any of the public lands subject to entry, at on dollar

and a quarter per acre, or less, and patents shall issue therefor, upon the terms and conditions enumerated in the Act aforesaid: Provided, however, the said decisions of the Commissioner of the General Land Office shall be approved by the Secretary of the Interior."

SWAMP AND OVERFLOWED LANDS

Under Act of September 28, 1850, the following table shows the acreage granted and the disposition by the State of the same according to the Report of the State Department of Agriculture.

Number of acres patented to State	20,422,303,70
Number of acres conveyed to Railroads	9,070,068.67
Number of acres deeded in canal and drainage companies	2,779,772.68
Number of acres deeded to E. N. Dickerson in 1867 for coupons of Florida R. R. bonds which fell due prior to 1866	248,602.98
Number of acres deeded to Wm. E. Jackson in 1868 for coupons of Florida, Atlantic and Gulf Central R. R. bonds	113,064.80
Well & Randolph, agents of the State to select swamp and overflowed lands, under contract with the Government of Nov. 8, 1851	100,000.00
Number of acres deeded on account of L. G. Dennis, agent of the State to procure and receive patents for swamp and overflowed lands at Washington, under contract, Nov. 10, 1875	5,800.27
Number of acres deeded on account of Williams & Swann, agents of the State to select swamp and overflowed lands under contract with the Trustees of Int. Impt. Fund, March 5, 1871	39,480.27
Number af acres deeded to Williams, Swann and Corley, agents of the State to select swamp and overflowed lands under contracts with Trustees Int. Impt. Fund of May 18,1873	13,542.61
Number of acres deeded on account of Sydney I. Wailes, agent of the State to procure patents for swamp and overflowed lands at Washington, under contracts with Trustees of Int. Imp. Fund of April 13, and Oct. 19, 1878	224,562.80
Number of acres deeded on account of John A. Henderson, agent of the State to select swamp and overfllowed lands under contract with Trustees of Int. Impt. Fund of March 15, 1884	164,124.68
Number of acres deeded on account of S. W. Teague, agent of the State to select swamp and overflowed lands, under contract with Trustees of Int. Imp. Fund of March 22, 1902	5,778.37
Number of acres deeded in Disston sale	4,000,000.00
Number of acres deeded under Act of 1917 to Commissioners for Seminole Indians	99,200
Number of acres deeded to other persons	2,508,185.14
Total acreage disposed of	19,372,183.27
Balance on hand, January 1, 1925	1,050,120.43

INTERNAL IMPROVEMENT LANDS

What we call the "Internal Improvement Lands Proper" are the lands conveyed to the State under an Act of Congress bearing date of September 4, 1841, and granting 500,000 acres; Section 8 of Chapter XVI, of said Act of September 4, 1841, page 455, U. S. Statutes at Large, reads: "Sec. 8. And be it further enacted, That there shall be granted to each State specified in the first section of this Act, five hundred thousand acres of land for purposes of internal improvement: Provided, That to each of the said States which has already received grants for said purposes, there is hereby granted no more than a quantity of land which shall, together with the amount such State has already received as aforesaid, make five hundred thousand acres, the selections in all of the said States to be made within their limits respectively, in such manner as the Legislatures thereof shall direct; and, located in parcels conformably to sectional divisions and subdivisions, of not less than three hundred and twenty acres in any one location on any public land except such as is or may be reserved from sale by any law of Congress or proclamation of the President of the United States, which said location may be made at any time after the lands of the United States in said States respectively, shall have been surveyed according to existing laws. And there shall be, and hereby is, granted to each new State that shall hereafter be admitted into the Union, upon such admission so much land including such quantity as may have been granted to such State before its admission, and while under a Territorial Government, for purpose of internal improvement as aforesaid, as shall make five hundred thousand acres of land, to be selected and located as aforesaid."

APPENDIX FOUR

TAX LAWS AND MATTERS RELATING THERETO

(The Revenue Laws of 1879 and 1891)

A brief summary of the laws relating to tax sales under the laws of 1879 and 1891 are given. The reason for this is that the abstracters and examiners may have before them a ready reference for Tax deeds issued by the Commissioner of Lands and Immigration, which was the officer authorized under the laws of 1879, and by the Governor and Secretary of the State, the officers authorized to issue deeds under the Act of 1891.

Chapter 3111, Act of March 11, 1879.

Section 1. All lands heretofore sold for taxes and bought by the State or any county, which were not redeemed on or before the first day of January, A. D. 1879, sold or advertised for sale prior to the 15th of February, A. D. 1879, in some newspaper, in compliance with section 3 of an act to provide for the redemption of lands sold for taxes, approved March 7, 1877, shall be certified to and recorded in the office of the Commissioner of Lands and Immigration within three months after the passage of this law. (4 Fla. 154; 6 Fla. 741.)

Sec. 2. It shall be the duty of the Commissioner of Lands and Immigration, as soon as the list of said lands shall have been recorded in his office, to advertise in one newspaper published in each Judicial Circuit the fact that such lands are subject to redemption during the years A. D. 1879 and 1880.

Sec. 18. The Commissioner of Lands and Immigration shall make the deed to the purchaser of said lands, which deed shall be in the following form:

"To all to whom these presents shall come, greeting:

WHEREAS, At a sale of lands by , of the county of , at public auction, at the county seat of said county, on the day of , in the year one thousand eight hundred and , for the non-payment of taxes assessed and levied thereon, and which remained unpaid on the day of such sale, together with the costs and charges due therewith, the following described lands were offered for sale, to-wit: ; and there being no person present who would take the said lands and pay the taxes, costs and charges thereon, the said lands were bid in for the State of Florida under the statutes then in force for the amount of such taxes, costs and charges, being the sum of dollars and cents, and said lands were thereupon conveyed by deed to the State of Florida by the said ; AND WHEREAS, Said lands have been re-advertised for sale, thereby giving notice to all claimants or former owner or owners thereof to redeem said lands, and no person hath appeared to redeem the same, whereupon said lands became subject to private entry for the amount of tax and cost of re-advertising, amounting altogether to dollars and cents: Now, therefore, know all men by these presents, that the State of Florida, in consideration of the sum of money last mentioned, paid by , of the county of , and State of , doth hereby give, grant and convey to the said and heirs and assigns forever the lands hereinbefore described: To have and hold the said lands with the hereditaments and appurtenances unto the said and heirs and assigns, to their own proper use, benefit and behoof forever.

In testimony whereof, I, , Commissioner of Lands, have executed this deed pursuant to and in virtue of the authority in me vested by the statutes of the State of Florida, and for and on behalf of said State of Florida, I have hereto subscribed my name officially and affixed the

seal of the Florida State Land Office at the Capitol, in Tallahassee, this day of , in the year one thousand eight hundred and .

(Official seal.)

Commissioner of Lands and Immigration.

Sec. 19. Such deed may be recorded as other deeds of land, and when recorded in the office of the county clerk of a proper county, shall vest in the grantee therein named an absolute estate in fee simple in the land therein described; and such deed, when so recorded, shall be prima facie evidence of the regularity of all the proceedings from the valuation of land, the sale thereof, the execution of the deed from the tax collector or other officer to the State, up to the execution of the deed.

Sec. 20. Any deed made in conformity with Sections 18 and 19 of this chapter, which shall have been recorded in the office of the county clerk of the county in which the land is situated, shall operate as a complete bar, after one year from the recording of such deed, against any and all persons who may thereafter claim title to said lands in consequence of any informality or illegality of the taxes or proceeding, and the title to said lands shall be complete in the purchaser thereof, his or her heirs or assigns forever, saving, however, lands not subject to taxation, or in which infants, persons of unsound mind, imprisoned or beyond the sea, the right to appear and contest the title to said lands within one year after their disabilities are removed. (Chap. 1865, Act Feb. 27, 1872.)

Sec. 21. The recording of any deed made under the provisions of Section nineteen in the county where the lands are situated, shall give the person named in such deed possession of the premises. (Ibid.)

ACT OF 1891

By this Act the time of the collection of taxes was from the first Monday in November to the first Monday in April, of each year.

It further provided that after the first Monday in April, the collector was to receive no further money in the payment of taxes, but was to, within thirty days after closing the books, make out a list in triplicate of all lands upon which taxes had not been paid, showing by said list the number of each certificate, the name of the owner as returned, a description of the land, and the amount due thereon. One of the triplicate lists was to be forwarded to the Comptroller, one to be filed with the Clerk and the third to be retained by the Collector.

The list forwarded to the Comptroller together with Certificate of the Collector was to be published within one year in some newspaper, selected by the County Commissioners of the several counties of the State, and also to be posted at the court house door of each county the list of the delinquent lands. The list to be published in the county in which the lands were situated, and the posting of the notice were deemed sufficient.

REDEMPTION OF LANDS:

Redemption could be made by any person or persons, their representatives or agents or any creditor having an interest in the lands within two years by making an affidavit that he or she is the owner, agent, creditor or persons having an interest in the lands and paying to the Clerk of the county the necessary fees, taxes and penalties, the Clerk remitting to the Comptroller that portion of the money so collected together with the name of the owner and the lands redeemed. The Clerk to issue to the party redeeming a receipt for the money paid in the redemption.

The Comptroller upon receipt of the money from the Clerk for the redemption shall cancel the certificate or such portion thereof as the part or interest redeemed, and shall forward said certificate to the Clerk, or

a certificate under the hand and seal of the Comptroller showing the portion redeemed, and it shall be the duty of the Clerk to deliver such certificate to the owner or persons redeeming. The Act further provided that the time of redemption might be extended beyond the two year period provided the lands had not been sold by the State.

WHEN TITLE TO VEST IN THE STATE:

The State's title to all lands which shall have been certified to it, and which shall not have been redeemed, shall mature and become absolute at the expiration of two years from its certification, and all such lands shall be placed by the Comptroller upon the State's list of public lands, and when sold by the State, all proceeds, over and above the amount of taxes, interest and cost, shall be placed to the credit of the General Revenue fund of the State.

ISSUANCE OF TAX DEEDS:

The Comptroller, State treasurer and Commissioner of Agriculture are constituted a Board, whose duty it shall be to grade the land to which the State may have acquired title under the Act and to fix such prices as their judgment may determine. Such land so graded shall be entered upon the records of the Commissioner of Agriculture, and by the Comptroller and by him held for sale. Deeds to be made on the form as prescribed by the Comptroller and to be executed and signed by the Governor of the State and the Secretary of the State. Such deed conveying all the right, title and interest that the State may have acquired under the provision of the Act. The Act was approved June 10, 1891.

Tax Deeds so executed did not require and were not acknowledged. (See Blount, Cooper and Massey's Digest. Appendix page 951.)

TAX LAWS OF FLORIDA

"AN ACT Requiring that the Comptroller of the State Be Made a Party to all Suits Brought to Cancel or Contest the Validity of any Tax Certificate held by the State.

Section 1. That hereafter no suit or proceeding shall be maintained in any court of this State for the purpose of cancelling or contesting the validity of any tax certificate held by the State unless the Comptroller of the State be made a party to such proceedings.

Sec. 2. That this Act shall take effect upon its becoming a law.

Approved June 7, 1919."

"AN ACT to Provide for the Redemption and Sale of Tax Certificates Held by the State of Florida, Covering Lands Sold to the State and to Prescribe the Duties of the Clerks of the Circuit Court in Connection Therewith.

Section 1. That the Clerks of the Circuit Court of the several Counties of the State of Florida are hereby authorized and directed to allow the redemption or purchase, in whole or in part, where the part to be redeemed or purchased can be ascertained by legal and usual subdivision, of any and all tax certificates held by the State of Florida issued in the year 1917 and prior thereto upon the payment of the amount of such certificate or certificates, or such portion thereof as the part to be redeemed or purchased shall bear to the whole, and the subsequent omitted taxes or taxes that have not been paid, including taxes for the year in which redemption or purchase is made, if made after the first day of April, with interest on such certificates and on unpaid taxes for the year 1916 and prior thereto at the rate of eight per cent. per annum from the first day of April, 1918; and interest on all unpaid or omitted taxes for the

year 1917 and subsequent years at the rate of twenty-five per cent. per annum for the first year and eight per cent. per annum thereafter, beginning with the first day of April next after the year for which such taxes are due.

Sec. 2. That the Clerks of the Circuit Court of the several counties of the State of Florida are hereby authorized and directed to allow the redemption or purchase, in whole or in part, where the part to be redeemed or purchased can be ascertained by legal and usual sub-division, of any and all tax certificates held by the State of Florida that were issued in the year 1918 and subsequent years upon the payment of the amount of such tax certificate or certificates, or such portion thereof as the part to be redeemed or purchased shall bear to the whole, with interest thereon from the date of such certificates at the rate of twenty-five per cent. per annum for the first year and eight per cent. per annum thereafter, and the payment of any and all subsequent unpaid or omitted taxes due on the land to be redeemed or purchased, including taxes for the year in which such redemption or purchase is made, if after the first day of April, with interest thereon at the rate of twenty-five per cent. per annum for the first year and eight per cent. per annum thereafter. beginning with the first day of April next after the year for which such taxes are due.

Sec. 3. That where there are more than one tax certificate held by the State against the same land, the certificates (except the last certificate) may be redeemed, in whole or in part, where the part to be redeemed can be ascertained by legal and usual sub-division, in the order of their issue, by paying to the Clerk of the Circuit Court of the County wherein the land described in said certificates is located the amount of the certificate to be redeemed, or such portion thereof as the part to be redeemed shall bear to the whole, and any and all subsequent omitted or unpaid taxes due on said land to be redeemed prior to the year for which the next certificate was issued, with interest on certificate issued in the year 1917 and prior thereto and unpaid or omitted taxes for the year 1916 and prior thereto at the rate of eight per cent per annum from the first day of April, 1918, and interest on subsequent certificates and unpaid taxes as provided in Section 2 of this Act.

Sec. 4. That when the face of any certificate held by the State issued subsequent to the oldest tax certificate held by the State covering any land to be redeemed or purchased is greater than would be the unpaid or omitted taxes for the year for which such subsequent tax certificate was issued, when based on the last assessed valuation against the land, then the unpaid taxes for that year based on the last assessed valuation may be collected in lieu of the amount due on such subsequent certificate and such certificate shall then be cancelled as to such land.

Sec. 5. That the unpaid or omitted taxes shall be collected upon the basis of the regular valuation placed by the assessor upon the land for the year for which taxes remain unpaid, and where no valuation was so placed then the last assessed valuation prior thereto shall be considered the regular valuation; but where the last assessed valuation against any land to be redeemed or purchased is less than the regular valuation then the last valuation shall be used.

Sec. 6. That the Clerks shall receive for their services hereunder the same fees now allowed by law for such services.

Sec. 7. That none of the provisions of this Act shall go into effect or become operative, in so far as relates to the sale of tax certificates, until January 1st, 1920, thereby giving the owner or agent or representative of the owner, or other person acting for the owner, the privilege of redeeming his land under this Act, up to and including December 31st, 1919, without any person having the right to purchase the same.

Sec. 8. That all laws and parts of laws in conflict with the provisions of this Act be, and the same are hereby, repealed.

Sec. 9. That this Act shall take effect immediately upon its passage and approval by the Governor, or upon its becoming a law without such approval.

Approved June 9, 1919."

"788. (578.) **Duty of clerk as to redemption of land.**—In consideration of the fee of fifty cents allowed the clerk for each tax certificate redeemed or sold, and the fees for searches as provided in Section 787, and the fee of one dollar for every tax deed issued containing the description in one certificate and ten cents for each additional description when a deed is applied for, it shall be the duty of the clerk to enter on the record of tax sales the redemption or sale of every tax certificate made through him, and shall also keep, in a substantial book to be furnished him by the county commissioners, as a permanent record of the office, a complete and full record of all sales and redemptions, giving the number of the tax certificate, the date of the tax certificate, the amount or proportionate amount of the face value of the certificate, the interest paid, the date of sale or redemption, the name of the holder or owner of the certificate, and the purchaser or redeemer of the certificate, and the disposition of the proceeds, with the date thereof." (Ch. 4888, Sec. 11, Acts of 1901 as amended by Ch. 5113, Sect. 2, Acts of 1903.)

"AN ACT Relating to Notification of Holders of Record Mortgages on Lands Sold for Taxes, of Tax Sales Affecting Such Mortgaged Premises.

Section 1. Each year within sixty days after the list of lands sold for taxes shall have come into the hands of the Clerk of the Circuit Court, the Clerk shall, whenever the records of his office show that any lot or tract of land so sold for taxes is encumbered by an unsatisfied mortgage, mail to said holder or holders of such unsatisfied mortgages, a list of all such mortgaged land as had been returned by the Tax Collector as sold for taxes, showing the number of each certificate and a description of the land sold. Provided, further, that before any mortgage holder or holders shall be entitled to said notice a written request shall have been filed, on or before the first day of May of each year, with the Clerk, showing the name and Post Office address of such mortgage holder or holders, together with a description of the land or lands embraced in said mortgage, the date of the said mortgage, and the book and page where same is recorded. Such request to be accompanied by the fee required in Section 2 of this Act.

Sec. 2. The Clerk, as a fee for preparing and mailing such notice, shall be entitled to receive the sum of Fifty Cents (50c) for each mortgage under which the notice aforesaid shall be given, such fee to be added to and become a part of and to bear interest at the same rate as the tax certificate or certificates, so specified and to be paid in redemption or purchase of the first of said certificates (if more than one) redeemed or purchased subsequent to such notice. The Clerk may stamp each certificate so subject to this fee with a stamp, indicating and identifying this charge.

This Act shall take effect immediately upon its passage and approval by the Governor or upon its becoming a law without his approval.

Approved June 14, 1921."

CHAPTER 8586—(No. 191)

"AN ACT to Vest in Courts of Chancery the Jurisdiction to Inquire Into and Determine the Legality of Tax Assessments and to Enjoin the Collection of Illegal Taxes on Real or Personal Property.

Section 1. That Courts of Chancery in this State shall have jurisdiction in all cases involving the legality of any tax, assessment or toll, and shall inquire into and determine the legality, equality and validity of the same under the constitution and laws of the State of Florida, and shall

render decrees setting aside such tax, assessment or toll, or any part of the same, that shall appear to be contrary to law, provided that the complainant shall in every case tender into court and file with the bill of complaint the full amount of any such tax, assessment or toll which he shall admit to be legal and due by him, or file with the bill of complaint a receipt showing payment of the same prior to the institution of the suit.

Sec. 2. That in any such cases, the court may issue injunctions to restrain the sale of real or personal property for any tax, assessment or toll which shall appear to be contrary to law or equity, and in no case shall any bill be dismissed because the tax assessment or toll complained of, or the injunction asked for, involves personal property only.

Sec. 3. That the only necessary party defendant to any such suit shall be the person whose duty it shall be to collect or enforce the collection of the tax, assessment or toll complained of, and service upon such person shall be deemed binding upon the county, State or municipality for whose benefit the tax, assessment or toll was levied, but any officer or other person interested may intervene and defend the same upon application to the court.

Sec. 4. All laws or parts of laws in conflict with this Act are hereby repealed.

Sec. 5. This Act shall take effect upon its becoming a law.

Approved June 14, 1921."

CHAPTER 10023—(No. 1).

"AN ACT to Validate Tax Levies Heretofore Made in This State and to Provide that When Lands Have Been Actually Assessed in the Name of the Owner Thereof that the Levy Under Such Assessment Shall Not be Held Invalid Because of the Fact that the Owner Thereof Has Not Made Return to the Tax Assessor of the Property Assessed, and to Require the Payment of all Taxes Which Could Have Been Lawfully Assessed Before any Tax Sale Certificate Shall be Cancelled.

Section 1. That every assessment of taxes heretofore made in the State of real estate where such assessment has been actually made in the name of the true owner shall be and is hereby validated in so far as the description of ownership is concerned, and no tax assessment or tax levy made upon any real estate in this State shall be held invalid by reason of or because of the fact that such real estate was actually assessed in the name of the true owner, although such owner had made no return of the real estate to the Tax Assessor.

Sec. 2. From and after the passage of this Act no decree shall be made by any Court in a suit brought by or on behalf of any land owner to enjoin any tax sale or to set aside or cancel any tax certificate in the State of Florida until such owner shall have paid to the Tax Collector of the County where the property is assessable the full amount of the taxes which could have been lawfully assessed against the property involved for the period covered by the assessment complained of, whether such real estate shall have been returned for assessment by the owner thereof or not. In all such cases the Court shall ascertain and determine and by decree fix the amount of such tax to be paid by the owner.

Sec. 3. This Act shall take effect upon its becoming a law.

Approved May 30, 1925."

"AN ACT Providing the Name in Which Real Estate Shall be Assessed in Cases Where no Return of Same is made for the Purpose of Taxation.

Section 1. The County Tax Assessors of the State of Florida are hereby authorized in all cases where land has not been returned for assessment on or before the first day of April each year, as required by law, to assess such land not returned for taxation, in the name of the

same party as for the preceding year, or he may assess such land as unknown, the use of either of these methods in designating the ownership of such land shall be valid; Provided, that in cases in which lands are not returned for taxation an erroneous statement of the owner of such land or entry on the Assessment Roll shall not invalidate the assessment.

Sec. 2. All laws and parts of laws in conflict herewith are hereby repealed.

Sec. 3. This Act shall be effective on and after January 1st, A. D. 1926.

Approved June 3, 1925."

"AN ACT Requiring Tax Collectors to Give Notice to Tax Payers and to Mortgage and Lien Holders in Certain Cases.

Section 1. That it shall be the duty of the Tax Collector within fifteen days after delivery to him of the tax book with the Assessor's warrant to mail to each tax payer appearing on the assessment roll, whose post office address may be known to him, notice that the tax book is open for payment of taxes, stating the amount of taxes due by such tax payer, and advising the per centum of discount allowed by law upon payment made by the date fixed by law, stating the date. The expense of printing such notices and the postage therefor shall be paid out of the general funds of the county upon payment thereof by the tax collector.

Sec. 2. That upon request of any holder of a mortgage or other lien upon any property against which any taxes may be assessed, accompanied by a fee of one dollar it shall be the duty of the tax collector to mail to such mortgage or lien holder a statement of taxes against such property, or a copy of the newspaper, if available, containing the list of lands advertised for sale for non-payment of taxes, as may be requested.

Sec. 3. Nothing in this Act shall affect the legality of any tax sale proceedings, whether the duty hereby imposed upon the tax collector be complied with or not.

Sec. 4. This Act shall take effect upon its becoming a law.

Approved June 9, 1925.

AN ACT Relating to the Assessment and Collection of Revenue.

Section 1. That all taxes imposed pursuant to the Constitution and laws of this State shall be a first law lien superior to all other liens on any property against which such taxes have been assessed which shall continue in full force and effect until discharged by payment; and no act of omission or commission on the part of any tax assessor, or any assistant tax assessor, or any tax collector, or any Board of County Commissioners, or any Clerk of the Circuit Court, or any other officer of this State or any newspaper in which any advertisement of sale may be published, shall operate to defeat the payment of said taxes; but any such acts of omission or commission may be corrected at any time by the officer or party responsible for the same in like manner as is now or may hereafter be provided by law for performing such acts in the first place, and when so corrected they shall be construed as valid ab initio and shall in no way affect any process provided by law for the enforcement of the collection of any such tax:

Approved June 3, 1925."

LAWS OF FLORIDA, ACTS OF 1925

"AN ACT to Provide for the Payment of Taxes Upon Real Property from the Proceeds of All Judicial Sales or Other Sales Made Under Legal Process.

That from and after the passage of this Act, it shall be the duty of all Sheriffs, Commissioners, Masters in Chancery, or other officers, whose duty it shall be to make sale of any property under the process or order of any Court to pay from the proceeds of such sale, after the payment of the costs of the proceedings wherein the said sale is made, and the counsel fees if any allowed by the court, all taxes State, County and Municipal, which may be assessed, due and unpaid against the said property, including any and all sums which may be required to be paid to redeem the same from the lien of all back taxes or tax certificates outstanding against the same.

Approved May 27, 1925."

APPENDIX FIVE

TABLES SHOWING STATE AND GOVERNMENT LANDS

Extract taken from the Eighteenth Biennial Report of the Department of Agriculture showing State lands on hand January 1, 1925, by counties. Also, showing vacant United States lands on hand July 1, 1924.

STATEMENT

Showing State Lands on Hand January 1, 1925

Estimated

County.	Swamp.	I. I. Proper.	School.	Seminary.
Alachua	757.31	.....	160.24	.....
Baker	214.23	.....	786.61	.....
Bay	3,205.45	440.24	349.05	.....
Bradford	245.85	.....	120.46	.....
Brevard	212.83	167.38	6,316.71	.....
Broward in Drainage Dist.	242,220.56	.....	13,955.02	.....
Calhoun	313.47	118.94	2,565.24	.....
Charlotte	1,648.53	.....	2,637.20	.....
Citrus	11,740.52	.....	989.98	.....
Clay	220.09	.....	400.70	.....
Colleir not in Drainage Dist.	3,896.78	.....	16,932.55	.....
Collier in Drainage Dist.	.....	.....	9,600.00	.....
Columbia	1,525.25	.....	18.20	.....
Dade not in Drainage Dist.	15.52	.....	.....	.....
Dade in Drainage Dist.	349,973.87	.....	24,181.57	.....
DeSoto not in Drainage Dist.	40.00	.....	1,960.00	.....
Dixie	80.00	79.93	2,271.06	.....
Duval	1,485.19	.....	1,420.09	.....
Escambia	2.80	.....	.....	.....
Flagler	.....	36.86	1,012.84	.....
Franklin	.....	.....	.....	.....
Gadsden	.....	.....	159.00	40.06
Glades in Drainage Dist.	9,579.40	.....	3,840.00	.....
Glades not in Drainage Dist.	602.05	.....	640.00	.....
Hamilton	518.90	.....	.....	.....
Hardee	160.00	.....	.....	.....
Hendry not in Drainage Dist.	6,886.10	.....	640.00	.....
Hendry in Drainage Dist.	38,414.85	.....	10,240.00	.....
Hernando	.....	40.09	40.00	.....
Highlands in Drainage Dist.	.....	.....	1,920.00	.....
Highlands not in Drainage Dist.	3,366.52	.....	4,781.89	.....
Hillsborough	.....	.....	119.79	.....
Holmes	39.86	40.00	410.63	.....
Jackson	.....	13.61	.....	.....
Jefferson	8,989.06	40.08	321.40	.....
LaFayette	40.00	.....	2,662.09	.....
Lake	583.90	.....	1,236.68	.....
Lee not in Drainage Dist.	2,610.60	.....	1,036.08	.....
Leon	4,170.00	.....	280.00	.....
Levy	4,054.83	.....	1,427.98	.....
Liberty	.....	.....	.....	.....
Madison	39.95	.....	1,280.74	.....

STATEMENT—Continued

Showing State Lands on Hand January 1, 1925

Estimated

County.	Swamp.	I. I. Proper.	School.	Seminary.
Manatee	2,578.68	.....	641.92	.....
Marion	659.54	160.62	6,608.85	.....
Monroe	92,307.87	.....	11,819.47	.....
Nassau	874.58	80.25	2,530.04	.....
Okaloosa	80.03	.....	160.00	.....
Okeechobee not in Drainage Dist	320.00	.....	1,587.45	.....
Okeechobee in Drainage Dist.	6,275.52	.....	1,280.72	.....
Orange	880.22	80.16	2,242.72	.....
Osceola	651.06	.....	481.03	.....
Palm Beach not in Drainage Dist.	.....	.....	4,238.17	.....
Palm Beach in Drainage Dist.	221,281.02	.....	36,469.98	.....
Pasco	40.14	40.00	565.29	.....
Pinellas	140.05	.....	.....	.....
Polk	2,169.75	.....	1,081.24	.....
Putnam	173.00	.....	520.79	.....
Santa Rosa	79.90	.....	.....	.....
Sarasota	1,683.27	.....	632.80	.....
Seminole	2,879.87	80.26	800.23	.....
St. Johns	6,615.66	.....	348.77	.....
St. Lucie not in Drainage Dist.	664.30	.....	4,172.37	.....
St. Lucie in Drainage Dist.	641.00	.....	1,917.20	.....
Sumter	280.27	240.12	520.45	.....
Suwannee	281.19	658.98	40.03	.....
Taylor	.....	80.08	2,813.22	.....
Union	1,713.02	229.00	.....	.....
Volusia	8,483.33	440.00	2,331.42	.....
Wakulla	40.00	840.00	.....	.....
Walton	302.98	161.37	795.47	.....
Washington	439.91	.....	314.59	.....
School Indemnity Land	.....	.....	290.56	.....
Totals	1,050.120.43	4,067.97	201,918.58	40.06

Note.—The Supreme Court has decided that the Trustees have no title to and no authority to sell the lands under the navigable waters of Lake Jackson in Leon County, and Lake Miscosukie, Jefferson County.

(See Florida Supreme Court Report No. 58, page 398), dated July 1,

VACANT UNITED STATES LANDS ON HAND JULY 1, 1924

STATEMENT SHOWING THE AREA OF LAND UNAPPROPRIATED AND UNRESERVED ON JULY 1, 1923.
FLORIDA.

Land District and County	Area in Acres			Character
		Unsurveyed.	Total	
Gainesville:				
Alachua	1,500		1,500	Low pine.
Bay	5,614		5,614	Do.
Baker	367		367	Do.
Brevard	2,411		2,411	Low pine and swamp.
Calhoun	714		714	Low pine.
Citrus	2,097		2,097	Do.
Clay	1,086		1,086	Do.
Columbia	918		918	Do.
Charlotte	1,494	120	1,614	Do.
De Soto	40		40	Do.
Duval	814		814	Low pine and swamp.
Dixie	4,305		4,305	Do.
Escambia	1,170		1,170	Low pine.
Flagler	182		182	Do.
Gadsden	192		192	Do.
Glades	2,160		2,160	Do.
Hamilton	931		931	Do.
Hernando	691		691	Do.
Highlands	1,643	200	1,843	Pine.
Holmes	245		245	Low pine.
Jackson	267		267	Do.
Jefferson	43		43	Do.
LaFayette	943		943	Low pine and swamp.
Lake	12,844		12,844	Low pine.
Lee	6,389	120	6,589	Low pine and swamp.
Levy	3,494		3,494	Low pine.
Liberty	771		771	Do.
Madison	745		745	Do.
Manatee	1,656		1,656	Do.
Marion	2,367	80	2,477	Low pine and scrub.
Monroe	1,419		1,419	Low pine and rocky keys.
Nassau	266		266	Low pine.
Okaloosa	240		240	Do.
Osceola	455		455	Do.
Orange	885		885	Do.
Palm Beach	213	640	853	Low pine and swamp.
Pasco	560		560	Low pine.
Polk	403		403	Do.
Putman	2,054		2,054	Do.
Sarasota	560		560	Do.
Santa Rosa	240		240	Do.
Seminole	160		160	Do.
St. Johns	829		829	Do.
St. Lucie	99		99	Mangrove swamp.
Sumter	240		240	Low pine.
Suwannee	334		334	Do.
Taylor	2,320		2,320	Do.
Union	651		651	Do.
Volusia	6,892		6,892	Low pine and scrub.
Walton	7,618		7,618	Low pine.
Washington	1,367		1,367	Do.
State Total	85,898	1,160	87,058	

NOTE.—For any information concerning the above United States lands, write the United Land Offices, Gainesville, Fla. The State has nothing to do with United States lands.

APPENDIX SIX

PROCEDURE IN THE INCORPORATION OF CITIES AND TOWNS AND PROVISIONAL MUNICIPALITIES

1721. (999.) **Number of inhabitants necessary to incorporate.**—It shall be lawful for the male inhabitants of any hamlet, village or town in this State, not less than twenty-five in number, who shall have the qualifications hereinafter prescribed, to establish for themselves a municipal government with corporate powers and privileges as hereinafter provided. (Chap. 2047, Acts 1875, Sec. 1.)

1722. (1000) **Distinction between cities and towns.**—Whenever any municipal government is established, and it shall appear that there are three hundred registered voters within the limits hereby to be designated, it shall be and the same is hereby incorporated and designated as a city, entitled to the privileges of a city. All municipal governments having less number of voters than those named above shall be and the same are hereby designated and declared incorporated towns, entitled to the privileges and rights of incorporated towns. (Ch. 1688, Acts 1869, Sect. 3.)

1723. (1001.) **Publication of notice to assemble and organize.**—Whenever any community of persons shall desire to form a municipal corporation under the provisions of this chapter, they shall, for a period of not less than thirty days, cause to be published in some newspaper of the county, or by posting in three places of public resort in the immediate vicinage, a notice requiring all persons who are registered voters, residing in the proposed corporate limits, which shall be stated in this notice, to assemble at a certain time and place to select officers and organize a municipal government.

1724. (1002.) **Proceedings of meeting.**—At the same time and place designated in the notice aforesaid, the qualified electors present, being not less than two-thirds of those whom it is proposed to incorporate, and not less than twenty-five in number, shall select a corporate name and seal for the municipality which they propose to form, and designate by definite metes and bounds the territorial limits thereof. They shall then proceed to choose by a vote of a majority of the said electors a mayor and not more than nine and not less than five aldermen, who shall, be known as the city council, and in whom shall vest the government of the city. There shall also be chosen at the same time and place, and in like manner, a city clerk and a marshall. The mayor, clerk and the marshall shall continue in office for the period of one year from the date of their election, or until their successors are elected and qualified. Provided, That the metes and bounds in this section shall not in any case apply to the fixing or establishing the boundary lines of towns and cities now or heretofore incorporated by the now existing laws of this State.

1725. (1003.) **Terms of aldermen.**—All aldermen elected for any incorporated city or town shall be elected for and hold their office for the term of two years: Provided, That at the first meeting of aldermen so elected they shall by lot divide their body into two classes, as nearly equal in number as possible, one of which class shall hold office for two years, and the other class shall hold their office for the term of one year, and an election shall be holden to elect the successors of each class, so as to have their successors elected at the expiration of the term of the said classes, respectively. (Ch. 3314, Acts 1881, Sect. 1.)

1726. (1004.) **Oath of officers.**—As soon as convenient, within three days from the date of the said election, the mayor-elect, shall take before some judicial officer of this State the following oath of office, viz: "I, A. B., do solemnly swear (or affirm) that I will support, protect and defend the Constitution and government of the United States and of the State of Florida against all enemies, domestic or foreign, and that I will bear true faith, loyalty and allegiance to the same, and that I am entitled to hold office under the Constitution; that I will faithfully perform all the duties of the office of mayor of..... on which I am about to enter. So help me God." And the mayor, upon being so qualified, shall administer to the aldermen and the other officers-elect the like oath, and thereupon they shall be considered fully qualified to assume the function and powers and enter upon their several duties as officers of the city aforesaid. (Ch. 1688, Acts 1869, Sect. 5.)

1727. (1005.) **Transcript of proceedings of meeting.**—A fair and complete transcript of the proceedings of the said meeting shall be prepared by the city clerk, in which shall be embodied the notice by which the meeting was convened, the number of qualified electors present, the style or name, seal and territorial limits of the corporation, and the names of the officers-elect to which the mayor and aldermen shall attach their signatures, attested by the clerk and the corporate seal, which transcript shall be forthwith filed with the clerk of the circuit court in and for the county within which the corporate limits are located, and shall be by him duly entered upon the public records of the said county.

1728. (1006.) **Powers of corporation.**—The provisions of the previous Sections having been complied with the persons therein named, and their successors, shall thereupon constitute and become a body corporate with full power and authority to take and to hold property, real, personal and mixed, and to control and dispose of the same for the benefit and best interest of the corporation aforesaid, to sue and be sued, plead and be impleaded, and to do all such other acts and things as are incident to corporate bodies.

APPENDIX SEVEN

STATUTORY LIENS

While a lien arises out of the relationship of debtor and creditor, and although that relationship exist, it requires in some classes of liens volition upon the part of the lien holder to enforce his rights under statutory procedure. Generally it may be said that liens are of two kinds, general and specific. General liens are those effecting all property of the debtor party, while a specific lien affects a particular or specific property only. The General Liens of interest to the abstracter are Judgments and debts arising out of the estate of decedents. Specific liens apply to the property of a particular kind. Examples are mortgages and taxes, liens for labor performed, materials furnished and other similar purposes.

The lien of taxes of course requires no voluntary act upon the part of the parties to create the same, while that of a mortgage does. Also affirmative steps must be taken by the lienor to establish and create his lien for labor performed or material furnished.

3495. Liens.—Liens prior in dignity to all others accruing thereafter shall exist in favor of the following persons, upon the following described real estate, under the circumstances hereinafter mentioned, to-wit:

3496. For Labor on Buildings and Structures.—In favor of any mechanic, laborer or other person who shall perform by himself or others any labor upon, or in the construction or repair of any building or other work or structure, or additions to or upon any fixtures therein or thereon; upon such buildings, work or structure and the land upon which it stands.

3498. For Labor on Farms, Etc.—In favor of any person performing by himself or others any labor upon or in any farm, orchard, grove, garden, park or other grounds, whether in clearing up, fencing, ditching or draining, or in maintaining, improving or cultivating the same; upon such farm, orchard, grove, garden, park or other grounds.

3499. For Materials Furnished.—In favor of any person who shall furnish any building material for the construction, repair or use of any building, fence, railroad, canal or telegraph line, wharf, bridge, mill, distillery or other manufacturing work or structure; upon the said buildings, lines or other property, and upon the lands upon which they stand.

3500. Mechanics and Laborers on Sidewalks.—That any mechanic, laborer or other person who shall perform by himself or others any labor, or shall furnish any materials, upon or in the construction or repair of any sidewalk laid or constructed on any street and adjacent to any lot, piece or parcel of land owned by any private person or corporation, in any city or incorporated town, by the procurement of the owner of such land or his agent or a person contracting with the owner to have the work done, or materials furnished, shall have a lien upon the interest of the owner in such land and may enforce the same in the same manner as is provided in this act.

3501. Extent of Lien.—If the labor or materials mentioned herein shall be done or furnished by the procurement of the owner of the property, or his agent, or of a person contracting

with him to have the work done or material furnished, the lien shall be upon interest of such owner; but if the labor be done or the materials furnished by the procurement of a person having less than the absolute interest, or of his agent, or of any person contracting with him to have the work done or materials furnished, the lien shall be only upon the limited interest of such person.

3516. Upon Both Real and Personal Property.—Liens for labor and liens for material provided for by this Act shall take priority among themselves according to the times that the notices required to create such liens respectively were given or were recorded in the cases where record is required; that is to say, each such lien which shall have attached to the property shall be paid before any such lien which shall have subsequently attached thereto, shall be entitled to be paid.

"In substance the law provides that the purchaser whose interest or claim to the property shall be created while construction is **in progress,** shall be deemed and held to be a purchaser or creditor **with notice,** and that as against purchasers and creditors of such owner, **without notice,** such lien shall be acquired upon the real estate, only **from the time of record** of notice of the lien in the office of the Clerk of the Circuit Court of the county where the real estate lies. This latter notice must contain a statement of the amount claimed, a description of the property upon which the lien is claimed and notice of intention to hold a lien for the amount of the claim; it shall be verified by the oath of the party seeking to fasten a lien upon the property. This notice is to be filed only after the labor has been entirely performed and the material entirely furnished. And a lien so perfected shall be effectual only against contractors or purchasers of the owner **without notice** if it be filed within three months after the performance of the labor or the furnishing of the materials."

This section, it should be noticed, is applicable only as between the owner of the property and the party contracting to furnish the labor and materials." (Murphy's Florida Real-estate Law, p. 99.)

3517. By Persons in Privity with the Owner.—

1. As Against the Owner.—As against the owner, absolute or limited, of the property, real or personal, upon which a lien is claimed, or person deriving through his death, or purchasers or creditors with notice, the lien hereinbefore provided for shall be acquired by any person, in privity with such owner, by the performance of the labor or the furnishing of the materials. Any purchaser or creditor whose title,interest, lien or claim in or to the property shall be created, or shall arise, while the construction or repair of such property as aforesaid is in progress shall be deemed and held to be a purchaser or creditor with notice.

2. As Against Purchasers and Creditors.—

(a) As to Real Estate.—As against purchasers and creditors of such owner without notice, such lien shall be acquired upon real estate only from the time of the record in the office of the clerk of the circuit court of the county where the real estate lies of a notice of such lien. Such notice shall contain a statement of the amount claimed, a description of the property upon which the lien is claimed, and a notice of the intention to hold a lien for the said amount, and shall be verified by the oath of the lienor or his agent. It shall be filed only after the labor has been entirely performed and the materials entirely furnished.

No such notice of a perfected lien shall be effectual against creditors or purchasers of the owner without notice unless it be filed within three months after the entire performance of the labor or the entire furnishing of the material.

"As an illustration, it was held by the Florida Supreme Court, in Bond Lumber Company vs. Masland, 45 Florida, page 188, that where a mortgagee knew when taking the mortgage that the mortgagor was erecting a hotel on the mortgaged land, that those having liens maintained their rights and were superior to the mortgagee." (Murphys Real Estate Law, page 100.)

3518. By Persons Not in Privity with the Owner.—

1. As Against the Owner.—A person entitled to acquire a lien, not in privity with the owner, as aforesaid, shall acquire a lien upon such owners' real or personal property as against him, and persons claiming through his death, and purchasers and creditors with notice by the delivery to him, or his agent, of a written notice that the contractor or other person for whom the labor has been performed, or the material furnished, is indebted to the person performing the labor or furnishing the materials in the sum stated in the notice; but if a person who is performing or is about to perform, by himself or others, labor, or is furnishing or is about to furnish materials shall so desire, he may deliver to the owner, or his agent, a written cautionary notice that he will do certain work, or will furnish certain materials, or both. A lien shall exist from the time of the service of the notice for the amount unpaid on the contract of and by the owner to the contractor or the person for whom the work was done or the material furnished.

Such service shall also create a personal liability against the owner of the property in favor of the lienor giving such notice for the amount due him as aforesaid, but not to a greater extent than the amount of such original contract.

(2) As Against Purchasers and Creditors.—

(a) Upon Real Estate.—As against purchasers and creditors of such owners without notice, such liens against real estate shall be acquired from the time of the recording (subsequent to the service of the notice provided for in Paragraph 1 of this section) in the office of the clerk of the court, in the county, of a notice of lien similar to that provided by Section 3517. Any purchaser or creditor whose title, interest, lien or claim in or to the property shall be created or shall arise while the construction or repair of such property as aforesaid is in progress shall be deemed and held to be a purchaser or creditor with notice.

"From the above statutes set forth, and the decision shown, it should be evident to the reader that any one purchasing property must exercise great care in determining the kind and nature of liens, if any, existing against the property. We desire to call special attention to the fact that an abstract does not, and cannot in every case, advise a purchaser of property of all the different kinds and characters of liens that may exist against the property. In other words, liens may exist against the property which are not a matter of record.

A purchaser should first search the record to ascertain if any claims for liens are filed. He should then see the property he is purchasing and ascertain if improvement or labor is in progress on the land or buildings, then learn if labor has been performed or materials furnished within three months prior to his purchase. If work or furnishing of materials is in progress, or work and materials have been furnished within three months, he should make certain before buying the property, that the claim therefor has been settled." (Murphy's Florida Real-estate Law, p. 102.)

3530.—Time of Bringing Suit.—When there has been no record of a notice of lien, suit to enforce lien (if it exists without such record) must be brought within twelve months from the performance of the work or the furnishing of the materials, and if there has been such record, the suit must be brought within twelve months from the time of such record.

3519. Remedies Against Either Real or Personal Property.—By

Page 195, Section 3519 of the R. G. S. F. is amended by House Bill No. 940, approved June 6, 1927. See General Laws Section of 1927, page 555.

Note: The bill is entitled "An Act to amend Section 3519 of he Revised General Statutes of Florida, 1920, Relating to the enforcement of Liens Accruing for Labor Performed and Material Furnished. The act relates to the method of enforcement and is mentioned here for the purpose of showing it is amended.

which the lien is held.

4. By a suit at law in which the declaration shall state the manner in which the lien arose, the amount for which the lien is held, the description of the property, and a prayer that the property be sold to satisfy the lien. In such suit the judgment for the plaintiff shall be a personal judgment against the defendant as well as declare the lien upon the property, describing it; and shall direct execution against such property, as well as against the property generally of the defendant.

3520. By Persons Not in Privity With the Owner.—A person not in privity with the owner may resort to any of the remedies prescribed by the foregoing section, except Paragraph 4; but in every suit at law or in chancery the contractor or the person for whom the labor was performed or the materials furnished must be made a party defendant to the suit; and the judgment or decree may provide for the recovery from the contractor or other person as aforesaid of the amount due by him, and from the owner of the amount due by him to the contractor or other person as aforesaid, at the time of the service of the notice provided for by Section 3518, as well as decree and enforce the lien against the property of such owner for such amount; but only one satisfaction of such judgment shall be had. And although no lien be found to exist and no judgment may be rendered against the contractor or other person for whom the labor was performed or the materials furnished for the amount due by him. If personal service in such suit cannot be made upon any defendant, constructive service may be made in the manner and under the rules prescribed for such service in chancery cases.

3523. Duty of Contractors.—It shall be the duty of any person who may contract to build or repair any house, mill, distillery, manufactory, machinery or other building, or who may sub-contract for all or any part of the construction or repair thereof, to furnish the person or persons having such building constructed or repaired, or in his or their absence, then his or their authorized agent, a correct and complete list of the names of the sub-contractors, mechanics and laborers to be employed in the building or repair of such house or other buildings, the names of all persons who may have furnished materials for the construction or repairs of such building, structure or machinery, and all the persons acquiring a lien upon such house, mill, distillery, manufactory or

3530.—Time of Bringing Suit.—When there has been no record of a notice of lien, suit to enforce lien (if it exists without such record) must be brought within twelve months from the performance of the work or the furnishing of the materials, and if there has been such record, the suit must be brought within twelve months from the time of such record.

3519. Remedies Against Either Real or Personal Property.—By Persons in Privity With the Owner.—All liens provided for by this chapter, either upon real or personal property, shall be enforceable by persons in privity with the owner.—

1. By a retention of possession for a period not exceeding three months of the property upon which the lien has attached, by the person entitled to such lien, if he were in such possession at the time the lien attached.
2. By a bill in equity.
3. By an ordinary suit at law and the levy of the execution obtained therein on the property on which the lien is held.
4. By a suit at law in which the declaration shall state the manner in which the lien arose, the amount for which the lien is held, the description of the property, and a prayer that the property be sold to satisfy the lien. In such suit the judgment for the plaintiff shall be a personal judgment against the defendant as well as declare the lien upon the property, describing it; and shall direct execution against such property, as well as against the property generally of the defendant.

3520. By Persons Not in Privity With the Owner.—A person not in privity with the owner may resort to any of the remedies prescribed by the foregoing section, except Paragraph 4; but in every suit at law or in chancery the contractor or the person for whom the labor was performed or the materials furnished must be made a party defendant to the suit; and the judgment or decree may provide for the recovery from the contractor or other person as aforesaid of the amount due by him, and from the owner of the amount due by him to the contractor or other person as aforesaid, at the time of the service of the notice provided for by Section 3518, as well as decree and enforce the lien against the property of such owner for such amount; but only one satisfaction of such judgment shall be had. And although no lien be found to exist and no judgment may be rendered against the contractor or other person for whom the labor was performed or the materials furnished for the amount due by him. If personal service in such suit cannot be made upon any defendant, constructive service may be made in the manner and under the rules prescribed for such service in chancery cases.

3523. Duty of Contractors.—It shall be the duty of any person who may contract to build or repair any house, mill, distillery, manufactory, machinery or other building, or who may sub-contract for all or any part of the construction or repair thereof, to furnish the person or persons having such building constructed or repaired, or in his or their absence, then his or their authorized agent, a correct and complete list of the names of the sub-contractors, mechanics and laborers to be employed in the building or repair of such house or other buildings, the names of all persons who may have furnished materials for the construction or repairs of such building, structure or machinery, and all the persons acquiring a lien upon such house, mill, distillery, manufactory or

machinery; and shall furnish a receipt in full for all claims or demands for work done or material furnished upon or for, or a release of such building, mill, distillery, manufactory or machinery from any claim against the same or for any such work done or material furnished.

3524. Failure of Contractor to Furnish Names.—If any contractor or sub-contractor fail or refuse to furnish the list of names provided for by above section, such failure or refusal may be plead in bar of such contractor's or sub-contractor's recovery against the owner or owners of such building, unless it can be shown that the claims of all sub-contractors, mechanics, laborers and material men, for labor done or materials furnished for the construction or repairs of such building, mill, distillery, manufactory or machinery have been fully paid off and discharged.

3532. By Filing Bond.—Any lienee may release his property from any lien claim thereon under this chapter by filing with the clerk of the circuit court a bond with two good and sufficient sureties, to be approved by the clerk, payable to the person claiming the lien in double the sum claimed, and conditioned for the payment of any judgment which may be recovered on said lien, with costs.

APPENDIX EIGHT

QUIETING LAND TITLES

AN ACT to Amend Section 3213 of the Revised General Statutes of the State of Florida Relating to Quieting and Removing Clouds from Title to Real Estate.

Be It Enacted by the Legislature of the State of Florida:

Section 1. That Section 3213 of the Revised General Statutes of Florida be amended to read as follows:

3213 (1950). Quieting title, removing clouds.—A bill in equity may be brought and prosecuted to a final decree by any person or corporation, whether in actual possession or not, claiming title, legal or equitable, to real estate against any person or corporation not in actual possession, who has, appears to have, or claims an adverse estate, interest, or claim, legal or equitable, therein, for the purpose of determining such estate, interest, or claim and quieting or removing clouds from the title to such real estate.

It shall be no bar to the granting of relief to the complainant in such cases that the title has not been litigated at law or that there may be only one litigant to each side of the controversy, or that the adverse claim, estate, or interest against which such bill is brought is void upon its face, or, though not void on its face, requires evidence, extrinsic of itself, to establish its validity.

Approved by the Governor May 8, 1925, and filed in office of Secretary of State May 9, 1925.

The Legislature during the session of 1925 further attempted to facilitate suits to quiet title passed another act which reads as follows:

AN ACT Prescribing by Whom and in What Manner Suits May be Brought to Quiet Title or Clear a Cloud from Real Estate, Designating the Necessary and Proper Parties Complainant and Defendant, and Prescribing the Effect of Such Suits Upon the Parties Thereto and Upon the Owners of the Lands Involved.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Any suit in Chancery for the purpose of quieting title to, or clearing a cloud from, real estate may be brought and maintained by and in the name of the owner, or of any prior owner, who may have warranted such title; and all lands, the title to which is subject to a common defect, may be embraced in one suit irrespective of the number of existing ownerships, legal or equitable; and the decree for complainant shall inure to the benefits of each existing owner to the extent of his or her legal or equitable title.

Section 2. The complainant, or any defendant, may, however, make parties to such cause any and/or all persons having title to, or otherwise interested in, such land, or any portion thereof, and if any defendant shall name a new party as defendant, such defendant or defendants shall be entitled to process by way of subpoena, or otherwise, as prescribed by law, to bring in such other person or persons so named as defendants, but no person not made a party to any such suit shall be bound by any decree rendered therein adverse to his, her, or its interest, but any decree favorable to any such interest shall inure to the benefit of any such party, as hereinabove provided.

Section 3. This Act is intended to provide a cumulative remedy and not to repeal any existing law.

Section 4. This Act shall take effect immediately upon its passage and approval by the Governor.

Approved by the Governor May 22, 1925, and filed in the office of Secretary of State May 25, 1925.

To simplify proceedings for removing clouds and quieting titles, the same Legislature also passed the following law:

AN ACT to Authorize a Single Proceeding for Removing Clouds and Quieting Titles to Land, Where Two or More Persons Have a Common Interest in Having the Same Questions Adjudicated, Although Their Interests May Relate to Separate Portions of the Land.

Be It Enacted by the Legislature of the State of Florida:

Section 1. That, where two or more persons are interested in removing a cloud or quieting title to one or several parcels of land as against the same clouds or adverse claims, it shall be permissible for them to unite as complainants in a single bill for such purpose, and to obtain a single decree removing such clouds, and quieting the titles, although their interests relate to separate portions of the land.

Section 2. Such suits shall not abate or become defective by the death or transfer of interest of one or more complainants, provided other complainants survive whose interest continues, and the decree rendered, whether for or against the complainants, shall bind the successors in interest, **pendente lite**, of a complainant, without the necessity of making a suggestion of the death or transfer of an original complainant, or making his successors parties to the suit.

Section 3. This Act shall take effect immediately upon its passage and approval.

Approved June 8,, 1925.

The Legislature during the 1925 session passed an act making certain documents which had been recorded for twenty years prima facie evidence of the facts recited therein. The act is as follows:

AN ACT to make Recitals in Decrees, Judgments, Deeds of Conveyance and Powers of Attorney Prima Facie Evidence of the Facts so Recited when Such Decree, Judgment, Deed of Conveyance or Power of Attorney has been Recorded More than Twenty Years; and to Prescribe the Conditions Under Which Such Recitals shall be Received in Evidence.

Be It Enacted by the Legislature of the State of Florida:

Section 1. The recitals in all judgments and decrees of the Supreme Court and of the several Circuit Courts of this State, when such judgment or decree appears regular and has been recorded as provided by law for more than twenty years, shall be admissible in evidence as prima facie proof of the truth of the facts so recited Either party to any suit at law or equity may offer a properly certified copy of such judgment or decree entered and recorded more than twenty years prior to the institution of the suit in which the same is offered, and such copy shall be admissible in evidence as prima facie proof of the facts in said judgment or decree set forth; provided, however, the party offering the same shall at least ten days before the trial of the suit in which this copy is offered in evidence give notice to the opposite side of the intention to offer such copy in evidence and the purpose for which the same will be offered, and delivered with such notice a copy of the judgment or decree. Provided that nothing in this Act shall render admissible in evidence any instrument of writing based on any judgment, deed of conveyance or power of attorney included in this Act where any such instrument of writing has heretofore been brought in question in any action at law or in equity in any suit now pending or heretofore decided.

Section 2. The recitals in any deed of conveyance or power of attorney shall be admissible in evidence when offered in evidence by either party to any suit at law or in equity as prima facie proof of the truth of the facts therein recited, provided such deed of conveyance or power of attorney appeared regular on its face and is a muniment in the chain of title under which the party offering the deed claims, and has been recorded as provided by law for more than twenty years prior to the institution of the suit in which it is offered; and provided further, that the

party offering the deed of conveyance or power of attorney for such purposes shall at least ten days before the trial of the suit in which the said copy is offered in evidence give notice to the opposite side of the intention to offer such copy in evidence and the purpose for which the same will be offered, and deliver with such notice a copy of the deed or power of attorney. The original deed or power of attorney shall be offered unless the party offering the certified copy shall show that the original is not within the custody or control of the party offering the copy.

Section 3. No copy of a judgment or decree shall be admitted in evidence as aforesaid when it shall be made to appear that such decree has been reversed, annulled, vacated, or set aside, or that the same in collateral proceedings has been successfully attacked. No deed shall be admitted in evidence as hereinbefore provided if it shall appear that the execution or validity of said deed has been successfully attacked in any proceedings to which the grantee therein named or those or any of them holding under such grantee has been a part or parties.

Approved June 8, 1925.

APPENDIX NINE

"FULL FAITH AND CREDIT CLAUSE"

The Constitution of the United States provides that the Public Acts, Records and Judicial Proceedings of the States shall be given full faith and credit in other states.

> "Full Faith and Credit shall be given in each State to the Public Acts, Records and Judicial Proceedings of every other State. And the Congress may by general laws prescribe the manner in which such Acts, Records and Proceedings shall be proved, and the effect thereof." (Section 1, Article 6 of the Constitution of the U. S.)

The following provisions of the United States Statutes govern the exemplification of the legislative acts and proof of judicial proceedings of the States:

> "The acts of the legislature of any State or Territory, or of any country subject to the jurisdiction of the United States, shall be authenticated by having the seals of such State, Territory or country affixed thereto. The records and judicial proceedings of the courts of any State or Territory, or of any such country, shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, that the said attestation is in due form. And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken." (U. S. R. S. 1905.)

EXEMPLIFICATION OF RECORD

State of_____

County of _____ SS. In_____ Court.

I,_____, Clerk of the_____ Court within and for_____ county, State of_____, and keeper of the records, files, and seal of said Court, do hereby certify that the foregoing and annexed is a true, full and complete transcript and copy of the original_____ as fully as the same appears from the record and files of said Court now remaining in my office, and that said Court is a Court of Record.

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of said Court at_____, _____, this the_____ day of_____, A. D. 19____.

(SEAL) _____

Clerk.

State of_____

County of _____SS.

I,_____, Judge of_____Court in and for the County of_____, State of_____, and sole presiding judge of the_____Court of_____ County, in said State, do hereby certify, that_____, whose name and genuine signature is subscribed to the foregoing certificate of attestation, now is and was, at the time of signing and sealing the same, Clerk of the_____Court of_____County, and keeper of the records, files and seal thereof, duly elected and qualified to office; that full faith and credit are and of right ought to be given to all of his official acts as such in all courts of record and elsewhere, and that this said attestation is in due form of law and by the proper officer.

Given under my hand this_____day of_____, A. D. 19____.

_____
Judge of the Court.

State of_____

County of _____SS.

I,_____, Clerk of the_____Court within and for said County and State, do hereby certify that_____, whose genuine signature appears to the foregoing certificate, was, at the time of signing the same, judge of the_____Court of _____County, State of_____, and sole presiding judge of the_____Court of_____ County, in said county and State, duly elected, commissioned and qualified; that full faith and credit are and of right ought to be given to all his official acts, as such, in all courts of record and elsewhere.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at_____, _____, this the_____day of_____, A. D. 19____.

(SEAL) _____
Clerk.

APPENDIX TEN

SUGGESTED FORMS FOR ABSTRACTERS

RECEIVER'S RECEIPT

Form No. 8

..... Receiver	Receiver's Recepit No. .....
of U. S. Land Office at	Dated .....
.....	Filed .....
To	Book ....., page .....
.....	

ACKNOWLEDGES payment in full of .....dollars for the following lands, to wit: (Describe lands.)

NOTE: Wherever possible the receipt should be shown, for it is often issued several years prior to that of the patent, and while it is not a means of passing title, yet it segregates the lands described from the public domain and precludes the Department from making further disposition of lands described therein. A Receiver's receipt, under Act December 4, 1855, Sect. 9, page 514 of McClelland's Digest, is prima facie evidence of title in certain cases. It may also be used to determine the date at which time the lands may legally become subject to taxation.

PATENT

Form No. 9

UNITED STATES OF AMERICA	PATENT
	Dated: .....
.....	Filed: .....
(Here insert grantee)	.. ...Book..... Page .....
	Certificate No. .....
	Consideration .....

RECITES: That ..... has deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at ....., whereby it appears that full payment has been made by ..... according to the provisions of the Act of Congress, approved the____day of_____ A. D. 18____, entitled an "Act." (Here give the title.)

(Land Description)

NOW KNOW YE That the United States of America in consideration of the premises and the several Acts of Congress. . . . . do by these presents give and grant unto ....., and to his heirs said tract above described.

TO HAVE AND TO HOLD the same . . . . unto the said..... and to his heirs and assigns forever.

By the President.....

(SEAL OF GENERAL LAND	By.....Secretary
OFFICE)	
Recorded in Volume .....,	.....
page_____	Recorder of General Land Office.

(Note: The form as given is the one suggested where the lands have been purchased but under the Act of 1862 the form will be different in the recitals. The main thing to notice is the execution of the instrument. (See Requirements as to Execution, this volume, page 18.)

FORM NO. 10

John Doe and his wife,	Warranty Deed
Mary Doe	Dated _____
to	Filed for Record _____
Richard Roe	In Deed Book_____Page_____
	Consideration_____, paid

Give, grant, bargain, sell and convey unto the said Richard Roe, and to his heirs and assigns forever, the following described land in_____County, Florida:

(Here insert description exactly as it appears on the record book.)

To have and to hold the above described land unto the said Richard Roe and to his heirs and assigns forever.

First parties bind themselves, their heirs and legal representatives "to warrant and forever defend the title so conveyed unto the said second party, and to his heirs and assigns, against the claims of all persons whomsoever.

Signed: JOHN DOE (SEAL)

MARY DOE (SEAL)

Signed, sealed and delivered in the presence of

(Here insert names of witnesses.)

Acknowledged in_____County, Florida, on May 1, 1926, by John Doe and his wife, Mary Doe, before A. B. Low, a Notary Public. Official seal. Commission expires May 9, 1928. Personal appearance and identification of grantors.

Separate examination of Mary Doe, wife of John Doe, before A. B. Low, Notary Public, and her acknowledgment recites that she joined in above conveyance for the purpose of relinquishing her dower rights in the land therein described, that she did so freely and voluntarily and without any constraint, compulsion, apprehension or fear of or from her said husband.

LEASE
Form No. 11

J. E. Delacroix	Turpentine Lease
	Dated: _____
To	Filed: _____
	_____Book _____, Page_____
R. Y. Harsen	Consideration: $_____

Party of the first part, in consideration of the sum of_____ annually, to be paid in two equal semi-annual installments on the first day of January and June of each year, respectively, demises and lets to the party of the second part the following described real estate, to-wit: (Describe property.)

To hold for the term of five years from the date hereof.

Party of the second part covenants as follows: (Here give the covenants of the second part.)

PROVIDES: That in case of default in the payment or the failure to perform the covenants hereinbefore provided for by second party, the terms of this lease shall cease and terminate, and the first party may enter and repossess said premises, without notice or demand, and second party or those claiming under him agrees to deliver up said premises. (Give signature of parties and witnesses as in case of deed—also statement of acknowledgment.)

Note: In abstracting a Lease it is very important to give the forfeiture clause fully, in order that the Examiner may have definite information before him.

DECLARATION OF TRUST
Form No. 12

J. J. DUNNE	DECLARATION OF TRUST
To	Dated: _____
THE PUBLIC	Filed: _____
	_____Book_____, page_____

RECITES: That the Florida Land Improvement Co., a corporation, did on the_____day of_____, A. D. _____, convey to me by Deed the following lands: (Here describe lands as in instrument.)

And that_____did furnish and pay to the said Florida Land and Improvement Co. the amount of the purchase money for said lands, and that the conveyance was made to me for the purpose hereinafter recited . . .

NOW THEREFORE BE IT KNOWN TO ALL PARTIES That I, the said J. J. Dunne, do by these presents make known, admit and declare that the said premises so conveyed by the said Florida Land and Improvement Co., were conveyed to me as trustee of_____ _____and that I hold and will dispose of the same for the benefit of_____. (Here set out fully the nature of the trust.)

(Signed:_____(Seal)

Signed, sealed and delivered
in the presence of:

_____

_____

Note: It is preferable that the names of the witnesses be given, for it may be necessary to refer to them in case of having to use extrinsic evidence.

Declarations of trust need not be by deed, but any writing subscribed by the trustee will be sufficient if it meets all other conditions of the requirements of evidence.

ACKNOWLEDGMENT

REVOCATION OF POWER OF ATTORNEY

Form No. 13

JAMES CUSHMAN

To

RAYMOND BLANTON

REVOCATION

Dated _____

Filed _____

Book_____, Page_____

REPRESENTS That the grantor executed a Power of Attorney, dated the_____day of_____, A. D._____, to grantee authorizing and empowering the grantee to do and to perform (Here describe powers) and that this instrument is given for the purpose of and does countermand and revoke all authority heretofore given.

Note: Gives signature, witnesses and acknowledgment as in Form 10.

AFFIDAVIT

Form No. 14

AFFIDAVIT
By

_____

Here name affiant.

VENUE: _____County,

State of _____

Subscribed and sworn to:_____

_____

Filed _____

_____Book, Page_____

(Here set out the recitals of the affidavit, signature, etc.)

AGREEMENTS

Form No. 15

J. Y. Humphries
with
Robinson T. Quarles

Agreement to Sell
Dated: _____
Filed: _____
_____Book_____, Page_____

RECITES: First party agrees, upon payment of_____ to convey to second party, his heirs and assigns the following described lands. (Here set out the description.)

Second party, in consideration of the covenants of the first party, agrees to pay said sum of money in manner following, to-wit: (Briefly state the installments, if any.)

Further it is mutually agreed, etc.

(Give signature, etc., as in Form 10.)

Note: The safer plan or method, where the instrument abstracted is a live or recent one, is to give the recitals fully, for then the abstracter will not undergo the hazard of placing a faulty construction upon what may possibly be a technical matter.

JUDGMENTS

FORM No. 16

IN THE_____COURT OF_____COUNTY, FLORIDA

J. R. Smith, Plaintiff
vs.
R. G. Bradstreet, Defendant

CAUSE OF ACTION_____
Dated _____
Filed _____
Book_____, Page_____

RECITES: "It is ordered, adjudged and decreed that Plaintiff _____do have and recover of and from the defendant the sum of $_____, together with interest at_____ per cent per annum until paid, and costs of the suit for which execution may issue."

_____

NOTE: No set form is necessary, provided the words are definite and certain, and this applies to both the parties and the amount of recovery. The safe plan is to give to the examiner a synopsis of the judgment. Furthermore, while the law implies a presumption of regularity in jurisdictional matters, yet where the judgment is made the basis of title it should be preceded by the necessary antecedent proceedings to show that the Court acquired jurisdiction of the parties as well as the subject matter. Especially service of process, whether personal or by publication, and proceedings involving infant defendants.

LEVY

Form No. 17

J. R. Smith, Plaintiff

vs.

R. G. Bradstreet, Defendant

CERTIFICATE OF LEVY

Dated _____

Book_____, page_____

RECITES: That the Sheriff of_____County, Florida, by virtue of an execution (or other legal process) to him directed from_____court for_____County, Florida, in favor of J. R. Smith, Plaintiff, and against R. G. Bradstreet, Defendant, dated_____day of_____, A. D. _____, did levy on the right, title and interest of the said defendant in and to the following described lands, to-wit: (Describe lands abstracted.)

Form No. 18

WILLS

LAST WILL AND TESTAMENT of _____

PROBATE COURT OF_____ COUNTY

WILL OF _____

Dated _____

Filed _____

Will Record No._____, Page_____

TESTATOR disposes of his estate as follows:
(Here state the various devises.)
APPOINTS_____Executor of his Last Will and Testament with (Here give the powers in full.)
Signed:_____

Note: Set out in full the facts of execution, for up to June 13, 1892, the law required three witnesses and the Testator disposed of only such property as he possessed at the time of execution. (See Chapter on "Wills.")

Form No. 19

LAST WILL AND TESTAMENT of _____

PROBATE OF WILL

Dated _____

Filed _____

Book _____, Page _____

(Give the probate in full, if necessary.)

PETITION TO TAKE POSSESSION OF LANDS

FORM NO. 20

IN RE ESTATE OF _____ Deceased

IN THE COUNTY'S JUDGE COURT OF _____ COUNTY, FLORIDA.

RECITES: That _____ is the duly appointed and qualified administrator of said estate, and that the said _____ died seized and possessed of the following real estate situate, lying and being in _____ county, Florida, to-wit:

(Here insert the lands as described.)

RECITES that the names, residences and addresses of all persons in possession of and claiming title to said real estate, or any portion thereof, or of all heirs at law of said real estate or other persons claiming title or interest whatsoever in said real estate so far as known to the petitioner are as follows:

Names	Residence	Address
_____	_____	_____
_____	_____	_____

(Here insert the names of heirs at law or other parties interested.)

REPRESENTS further that there are lawful debts and demands against said estate due and past due, and no means of paying the same except by recourse to the lands above described.

WHEREFORE petitioner prays that an order be granted authorizing petitioner to take charge of said real estate for the payment of debts.

Signed: _____

Administrator of Estate of

_____,

Deceased.

Said petition is properly verified before _____ on the _____ day of _____, 19____.

CITATION DIRECTED TO SHERIFF

Form No._____

In the County Judge's Court for
_____County
Florida

STATE OF FLORIDA

IN RE ESTATE OF

_____
Deceased

CITATION ISSUED OUT OF SAID COURT DIRECTED TO

_____ AS

SHERIFF OF_____
COUNTY, FLA.

TO: (Here write the names of the persons to whom Citation is directed.)

REPRESENTS that_____as Administrator of the Estate of_____, deceased, has filed a petition in said court praying for an order authorizing him as administrator to take possession of the real estate hereinafter described as assets of the estate and subject it to the payment of debts of said estate. The real estate described in said petition is:

(Here describe lands described.)

REPRESENTS further that you claim some interest or right of possession in said real estate or some portion thereof, and therefore you are commanded to appear in this cause on or before the_____ day of_____, 19____, the same being not less than forty days from the date of Citation and show cause, if any you have, why said petition should not be granted.

To the Sheriff of _____County, Florida.

Signed_____
County Judge.

Filed_____, and recorded in_____ Book_____, page_____of the records of_____ in_____county, Florida.

ORDER TO TAKE POSSESSION

Form No. 22

In the Court of the County Judge of _____ County, Florida

IN RE ESTATE OF

_____
Deceased

ORDER TO TAKE POSSESSION OF REAL ESTATE

RECITES That the cause was heard upon the petition of the Administrator of the Estate of _____, deceased, praying that the real estate hereinafter described be subjected as assets for the payment of debts of said estate, to-wit:

(Here describe the lands.)

And it appearing that Citation has been duly issued and published as required by law and that service thereof has been duly made upon or accepted by all parties as required by law: _____

_____
(Here name parties, if so designated in order.)

And it appearing from said petition that the personal property of said estate has been exhausted or is insufficient to pay the debts of said estate.

IT IS THEREFORE, ADJUDGED AND DECREED that the said _____ Administrator aforesaid is hereby authorized to take and enter into possession of the real estate above described as assets of said estate, and subject the same to the payment of debts thereof.

It is further ordered that _____

_____
(Here name persons in possession, if so named.)
and all other persons in possession of said real estate or any part thereof, surrender possession to said administrator.

Signed _____
County Judge.

Filed the _____, and record in _____ Book, page _____ of the records of _____ County, Florida

(The abstracter should be careful in showing the record with reference to this proceeding especially if minors are parties. After the proceedings have developed to the point of taking possession the procedure is not in any way distinct from the regular showing pointed out in the chapter on "Administrations.")

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